



Arizona Medical Board

9545 East Doubletree Ranch Road • Scottsdale, Arizona 85258

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FINAL MINUTES FOR REGULAR SESSION MEETING Held at 9:00 a.m. on August 11, 2004, 8:00 a.m. on August 12, 2004, 9535 E. Doubletree Ranch Road - Scottsdale, Arizona

Board Members

Edward J. Schwager, M.D., Chair
Sharon B. Megdal, Ph.D., Vice Chair
Robert P. Goldfarb, M.D., Secretary
Patrick N. Connell, M.D.
Ingrid E. Haas, M.D.
Tim B. Hunter, M.D.
Becky Jordan
Ram R. Krishna, M.D.
Douglas D. Lee, M.D.
William R. Martin III, M.D.
Dona Pardo, Ph.D., R.N.
Chris Wertheim

Board Counsel

Christine Cassetta, Assistant Attorney General

Staff

Barry A. Cassidy, Ph.D., P.A.-C, Executive Director
Barbara Kane, Assistant Director
Beatriz Garcia Stamps, M.D., M.B.A., Board Medical Director
Gary Oglesby, Chief Information Officer
Tina Speight, Public Affairs Coordinator
Susan Ahn, Legal Coordinator

CALL TO ORDER

Edward J. Schwager, M.D., Chair, called the meeting to order at 9:01 a.m.

ROLL CALL

The following Board Members were present: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., William R. Martin III, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., and Chris Wertheim.

CALL TO THE PUBLIC

Statements issued during the call to the public appear beneath the case referenced.

C.D. made a statement at the call to the public regarding a case not on the agenda. She stated that she has several concerns about the Arizona Medical Board. She filed a complaint against William Mora, M.D., in December 2003. She stated that the time frame of this case is unacceptable. She does not feel like the Board has her best interest at heart. C.D. stated that the Board must have integrity and protect the public's health by doing it.

FORMAL INTERVIEWS

NO.	CASE NO.	COMPLAINANT v PHYSICIAN	LIC. #	BOARD RESOLUTION
1.	MD-02-0713A	F.H. HARA P. MISRA, M.D.	14933	Draft Findings of Fact, Conclusions of Law, and Order for a Letter of Reprimand for an inadequate pre-operative evaluation that compromised the patient's surgical procedure.

FORMAL INTERVIEWS (Continued) – HARA P. MISRA, M.D.

Hara P. Misra, M.D., appeared before the Board with his attorney Michael E. Bradford. Patrick N. Connell, M.D., stated that he has worked with Mr. Bradford in the past, but that will not affect his ability to adjudicate this case. Ram R. Krishna, M.D., recused himself from this case.

Robert Barricks, M.D., Board Medical Consultant, reviewed this case with the Board. The allegations are that Dr. Misra failed to remove cancerous ovaries during the surgical procedure as determined during the pre-operative evaluation and consent by the patient. This failure resulted in reoccurrence of cancer within four months of remission with the prognosis of untreatable, terminal cancer and the ultimate death of the patient. Also, that Dr. Misra inappropriately performed a gynecological surgery to remove cancerous ovaries without the proper qualifications and expertise. Dr. Misra inadequately evaluated this patient preoperatively. Dr. Barricks stated that the Board received information from Mr. Bradford on August 9, 2004. He stated that the Board's attorneys may need to address this information in executive session.

Dr. Misra made a statement to the Board. He informed the Board that he no longer practices gynecological surgery. Dr. Misra reviewed the symptoms of the patient, informed the Board that a detailed work-up was performed, and noted that surgical intervention occurred to remove the mass. Dr. Misra explained that the computed tomography (CT) scan did not mention the ovarian origin of the mass. Dr. Misra stated that if cancer is obvious he refers patients to a gynecological oncologist. The result of the mass was malignant. Dr. Misra stated that he discovered the patient had a frozen pelvis during the surgery and decided not to be aggressive because that might have caused complications. Also, Dr. Misra thought that the patient would undergo another tumor de-bulking surgery soon afterwards when the oncologist and primary care physician (PCP) felt it would be safe. Dr. Misra stated that his operative report clearly indicated "no removal of the ovaries."

Ingrid E. Haas, M.D., presenting Board member, began the questioning of Dr. Misra. Dr. Haas confirmed with Dr. Misra that he reviewed the patient's CT scan, sent from the patient's PCP, prior to the surgery. Dr. Misra clarified this was written as "explore lab" rather than a "tumor resection." Dr. Misra reviewed with Dr. Haas other possibilities that he considered. Dr. Misra indicated that the tumor markers were not specific. Dr. Haas stated that the CT scan indicated infiltration on the colon and asked Dr. Misra why a bowel prep was not indicated. Dr. Misra stated that he was not resecting the bowel in this patient so it was not necessary.

The Board Members began questioning Dr. Misra. Dr. Misra clarified for Edward J. Schwager, M.D., that he did not ask a gynecological oncologist to assist him because the oncologist was not available. Dr. Misra stated that he was instructed to refer the patient to the gynecological oncologist and he did. Dr. Schwager asked Dr. Misra why he did not perform tumor markers pre-operatively or use a gynecological oncologist to assist him with the surgery of this patient. Dr. Misra stated that he is capable of doing this surgery, but his practice was to refer patients to a gynecological oncologist. Dr. Misra stated that a specialist should perform a second surgery if the tumor markers or the patient clearly show symptoms.

Mr. Bradford made a statement to the Board on behalf of Dr. Misra. He pointed out the question of Dr. Misra's failure to surgically attack the frozen pelvis. Once a patient has a positive CT scan, the mass should be explored. Mr. Bradford stated that once it was determined that this patient had a frozen pelvis the ovaries could not be removed. Mr. Bradford urged the Board to dismiss this case.

MOTION: Edward J. Schwager, M.D., moved to go into executive session at 9:49 a.m.

SECONDED: Patrick N. Connell, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

The Board returned to open session at 10:08 a.m.

Dr. Schwager confirmed with Dr. Barricks that the Board did receive peer review materials relative to this case. Dr. Barricks clarified that the peer review materials have been with the case file from the beginning. Dr. Barricks indicated that when he was reviewing the allegations with the Board, he was referring to the letter from Dr. Thompson and not the peer review information itself. Dr. Barricks stated that Dr. Thompson's letter was received as supplemental materials from Mr. Bradford on August 9, 2004. Dr. Schwager confirmed with Mr. Bradford that peer review materials are confidential and were not placed in any of the reports from Board Staff that the Board Members see or review. Mr. Bradford wanted to state for the record that peer review information does exist and can be in the opinions.

Dr. Haas recommended that the Board support a finding of Unprofessional Conduct in violation of A.R.S. § 32-1401(26) "Unprofessional Conduct" includes the following, whether occurring in this state or elsewhere: (q) Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public. Dr. Haas stated that Dr. Misra fell below the standard of care for the inadequate pre-operative evaluation and inappropriately carrying out a surgery without

FORMAL INTERVIEWS (Continued) – HARA P. MISRA, M.D.

consultation of an expert physician. Dr. Haas stated that the actual harm could not be substantiated because the level of cancer that the patient was diagnosed with would not have changed her outcome. But, Dr. Haas explained that the potential harm was that the patient was not offered the optimal care at the time of the initial surgery - tumor de-bulking or maximum decrease in volume of tumor mass.

MOTION: Ingrid E. Haas, M.D., moved for a finding of Unprofessional Conduct for the inadequate pre-operative evaluation and inappropriately carrying out a surgery without consultation of an expert opinion in violation of A.R.S. § 32-1401(26) "Unprofessional Conduct" includes the following, whether occurring in this state or elsewhere: (q) Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.

SECONDED: Patrick N. Connell, M.D.

VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent

MOTION PASSED.

MOTION: Ingrid E. Haas, M.D., moved for Board Staff to Draft Findings of Fact, Conclusions of Law, and Order for a Decree of Censure for inadequate pre-operative evaluation compromising the patient's initial surgical procedure.

SECONDED: Douglas D. Lee, M.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Ingrid E. Haas, M.D. and Douglas D. Lee, M.D. The following Board Members voted against the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Tim B. Hunter, M.D., Becky Jordan, William R. Martin, III, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., and Edward J. Schwager, M.D. The following Board Member was recused from the motion: Ram R. Krishna, M.D. The following Board Member was absent when this matter was considered: Chris Wertheim.

VOTE: 2-yay, 8-nay, 1-abstain/recuse, 1-absent

MOTION FAILED.

Dr. Schwager stated that the Board's Medical Consultant and the materials that Dr. Misra submitted supported the operative technique that Dr. Misra used. Dr. Schwager reiterated that the issue is the pre-operative evaluation. There was potential harm, but unlikely any actual harm. Dr. Schwager stated that a Decree of Censure might be too severe, but suggested an Advisory Letter would be more appropriate. Sharon B. Megdal, Ph.D., indicated that Dr. Misra has a prior Letter of Reprimand and inquired what it was for. Mr. Bradford responded. Dr. Megdal stated that she cannot see any prior actions similar to this case and suggested a Letter of Reprimand instead of a Decree of Censure. William R. Martin, III, M.D., stated that the pre-operative work-up was not adequate, however based upon the experts' reports; the patient's outcome would not have changed. Dr. Martin indicated that he would support an Advisory Letter.

MOTION: William R. Martin, III, M.D., moved to issue an Advisory Letter for inadequate pre-operative evaluation compromising the patient's initial surgical procedure. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

SECONDED: Tim B. Hunter, M.D.

Douglas D. Lee, M.D., spoke against the motion for an Advisory Letter. Dr. Lee recommended a Letter of Reprimand because the patient underwent a second procedure that otherwise would not have been performed if the proper pre-operative preparation had been done. Dr. Megdal agreed with Dr. Lee. Tim B. Hunter, M.D., explained that he would support an Advisory Letter because the course of the patient would not have changed with the work-up performed pre-operatively. The patient had a tumor and the prognosis was not good.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Tim B. Hunter, M.D., Becky Jordan, William R. Martin, III, M.D., and Edward J. Schwager, M.D. The following Board Members voted against the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., and Dona Pardo, Ph.D., R.N. The following Board Member was recused from the motion: Ram R. Krishna, M.D. The following Board Member was absent when this matter was considered: Chris Wertheim

VOTE: 4-yay, 6-nay, 1-abstain/recuse, 1-absent

MOTION FAILED.

MOTION: Douglas D. Lee, M.D., moved for Board Staff to Draft Findings of Fact, Conclusions of Law, and Order for a Letter of Reprimand for inadequate pre-operative evaluation that compromised the patient's surgical procedure.

SECONDED: Patrick N. Connell, M.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Douglas D. Lee, M.D.,

FORMAL INTERVIEWS (Continued) – HARA P. MISRA, M.D.

William R. Martin, III, M.D., Sharon B. Megdal, Ph.D., and Dona Pardo, Ph.D., R.N. The following Board Member voted against the motion: Edward J. Schwager, M.D. The following Board Member was recused from the motion: Ram R. Krishna, M.D. The following Board Member was absent when this matter was considered: Chris Wertheim.

VOTE: 9-yay, 1-nay, 1-abstain/recuse, 1-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
2.	MD-02-0749A	AMB	HARA P. MISRA, M.D.	14933	<p>Patient C.M. Tabled a decision regarding the applicable sanction until the case for C.C. is returned to the Board.</p> <p>Patient C.C. Continue the investigation; Board Staff have the original Outside Medical Consultant re-review this case along with the transcript of today's formal interview.</p>

Hara P. Misra, M.D., appeared before the Board with his attorney Michael E. Bradford. Patrick N. Connell, M.D., stated that he has worked with Mr. Bradford in the past, but that will not affect his ability to adjudicate this case. Ram R. Krishna, M.D., recused himself from this case.

William Kennell, M.D., Board Medical Consultant, reviewed this case with the Board. The allegations are that Dr. Misra failed to obtain immediate and appropriate consultations at the time of attempted placement following the migration of a Greenfield filter into the heart of patient C.M. Dr. Misra performed a contraindicated carotid artery surgery on patient C.C. Dr. Misra failed to promptly diagnose ischemic colitis post-abdominal aortic aneurysm surgery on patient J.S.

Dr. Misra made a statement to the Board. Dr. Misra reviewed the details of this case with the Board. Dr. Misra stated that after the surgery, the patient was kept in the intensive care unit (ICU). Dr. Misra stated the patient was not ignored and anticipated that arrhythmias might occur. When they did occur, Dr. Misra was there within 15 minutes and surgical interventions were done. Afterwards the patient was doing very well. The foreign body in the heart can be left alone until the patient is stabilized.

Patient C.M.

Robert P. Goldfarb, M.D., presenting Board member, began the questioning of Dr. Misra. Dr. Goldfarb asked Dr. Misra how many Greenfield filters he performs in a year. Dr. Misra stated that he did not perform any in this past year. Dr. Goldfarb referred to one of Dr. Misra's operative notes. Dr. Misra stated that it said "no operative complication, incidental first Greenfield filter did not open mechanical device problem and open at the right pulmonary artery, minimal bleeding." Dr. Goldfarb stated that one of the operative complications for this type of surgery is that the Greenfield filter could migrate to the heart. Dr. Misra referred to the operative report dictation that makes it clear that there were no complications at that time. Dr. Goldfarb asked if Dr. Misra used any form of measurement to ensure the correct size filter was being used before putting the Greenfield filter into place. Dr. Misra stated that he did not. Dr. Misra stated that the placement of the filter above the renal vein is not detrimental to the prevention of the pulmonary embolism. Dr. Goldfarb confirmed with Dr. Misra that it would be best to determine the position before putting it into place. Dr. Misra stated that each patient is individual. Dr. Goldfarb confirmed with Dr. Misra that he stated at the beginning of the formal interview that this was not an obese patient, but a marginal obese patient.

The Board Members began questioning Dr. Misra. Tim B. Hunter, M.D., asked if Dr. Misra had radiographic images of the patient's filter. Dr. Misra stated that he had an x-ray. Dr. Misra stated that if the patient remained asymptomatic he would locate the filter, determine to remove or leave the filter, and refer to a specialist for consultation.

Dr. Goldfarb asked Dr. Kennell if it was his opinion that the failure to locate the position of the filter was below the standard of care. Dr. Kennell stated that if it is intra-cardiac, all literature indicates immediate retrieval. Dr. Kennell stated that the use of a venogram is sloppy. A physician must be precise. Dr. Goldfarb referred to Dr. Misra's handwritten note of "no complications" and stated that if another physician needed to care for the patient in an emergency, they would not have been aware of any complications, specifically, the migrating filter.

Patient C.C.

Dr. Misra explained to Dr. Goldfarb what a tandem lesion is. Dr. Goldfarb stated that the patient was an elderly woman and had seventy-five percent occlusion of the carotid artery on the left side and had a tandem lesion inside the head. Dr. Goldfarb and Dr. Misra discussed the possibilities of why the patient had a post-operative stroke. Dr. Misra stated that the intracranial lesion did not have anything to do with the thrombosis of the artery. Dr. Goldfarb stated that the flow is determined by the diameter of the smaller lesion. Dr. Misra disagreed and explained why.

FORMAL INTERVIEWS (Continued) – HARA P. MISRA, M.D.

Mr. Bradford made a statement to the Board on behalf of Dr. Misra. Mr. Bradford referred to Dr. Kennell's report regarding the migration of the inferior vena cava (IVC) filter. The report stated that regardless of the cause of migration into the heart, the standard of care would require specialized diagnostic procedures. Dr. Kennell's report also stated to bring in consultants immediately to assess the location of the filter. Mr. Bradford stated that he submitted a report from another surgeon that suggests immediate extraction is necessary only if significant arrhythmia occurs. Mr. Bradford pointed out the difference of opinions regarding the circumstances involved in this case. He urged the Board to dismiss this case.

Dr. Kennell stated that the standard of care was violated because the filter was not located immediately. He explained that the literature of tandem lesions is unclear. This was an ill-chosen operation.

Patient C.C.

MOTION: Robert P. Goldfarb, M.D., moved to continue the investigation and that Board Staff have the original Outside Medical Consultant re-review this case and provide the transcript of today's formal interview for further review.

SECONDED: William R. Martin, III, M.D.

VOTE: 11-yay, 0-nay, 1-abstain/recuse, 0-absent

MOTION PASSED.

Patient C.M.

Dr. Goldfarb recommended that the Board support a finding of Unprofessional Conduct in violation of A.R.S. § 32-1401(26) "Unprofessional Conduct" includes the following, whether occurring in this state or elsewhere: (II) Conduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient. There was failure of the surgeon to notify the cardiologist or cardiovascular surgeon. Also, the patient could have sustained a life-threatening event.

MOTION: Robert P. Goldfarb, M.D., moved for a finding of Unprofessional Conduct due to the failure to locate the exact location of the migration of the filter in violation of A.R.S. § 32-1401(26) "Unprofessional Conduct" includes the following, whether occurring in this state or elsewhere: (q) Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.

SECONDED: Tim B. Hunter, M.D.

William R. Martin, III, M.D., asked for clarification of potential harm or actual harm. Dr. Goldfarb confirmed this should be A.R.S. § 32-1401(26) "Unprofessional Conduct" includes the following, whether occurring in this state or elsewhere: (q) Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public, rather than A.R.S. § 32-1401(26)(II) Conduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient. This is because Dr. Goldfarb did not find fault for the migration, but how Dr. Misra handled the complication. Dr. Goldfarb clarified for Dr. Hunter that it bothers him that the patient necessitated a filter so quickly, but does not disagree with that.

VOTE: 11-yay, 0-nay, 1-abstain/recuse, 0-absent

MOTION PASSED.

MOTION: Robert P. Goldfarb, M.D., moved to table this case until the case for C.C. is returned to the Board in the event further Unprofessional Conduct is found.

SECONDED: Becky Jordan

VOTE: 11-yay, 0-nay, 1-abstain/recuse, 0-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
3.	MD-03-0524A	AMB	MICHAEL H. BURMAN, M.D.	15917	Advisory Letter for poor management of fetal distress. A.R.S. § 32-1401(3)(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

Michael H. Burman, M.D., appeared before the Board with his attorney Tom Connelly.

Robert Barricks, M.D., Board Medical Consultant, reviewed this case with the Board. The allegation is that Dr. Burman delayed delivery of a fetus resulting in prolonged fetal distress and permanent neurologic damage in the infant.

Dr. Burman made a statement to the Board. He reviewed the details of the patient's labor with the Board. Dr. Burman stated that he did attempt to obtain consent from the patient for a Caesarean Section (C-Section) because the fetus could be compromised if her labor continued. Dr. Burman indicated that he was not the patient's normal physician and had no

FORMAL INTERVIEWS (Continued) – MICHAEL H. BURMAN, M.D.

doctor patient relationship with her until this point. He explained that the patient would not consent to a C-Section until her husband arrived, which was approximately 45 minutes to 1 hour later. Dr. Burman stated that when the patient's husband arrived, they desired a vaginal delivery and since her tracing had improved during that time he informed them of their alternatives. He tried to establish a rapport with the family without forcefully performing a C-Section. However, he was still concerned about the fetus' condition and there was no cooperation.

Ingrid E. Haas, M.D., presenting Board member, began the questioning of Dr. Burman. Dr. Haas asked if Dr. Burman was aware that the patient was seen as an outpatient for observation earlier in the week because of a fall she had. Dr. Burman stated that he was only aware of this in the afternoon and not when the patient was admitted for delivery. Dr. Burman stated that an abruption was diagnosed after the delivery and there were no symptoms prior. Dr. Burman stated that the patient refused a C-Section. Dr. Haas discussed the use of pitocin with Dr. Burman. Dr. Burman consulted with the patient and her husband and gave them the options of a C-Section or expediting delivery. Dr. Haas asked Dr. Burman why he left to go perform another surgery when there were signs of fetal distress with this patient and her delivery. Dr. Burman stated that there was other staff on duty for coverage. Dr. Burman informed the patient that a C-Section would be the best course for the baby.

The Board Members began questioning Dr. Burman. Edward J. Schwager, M.D., verified with Dr. Burman that the State of California did not take any action regarding this matter. Dr. Schwager commented that Dr. Burman's documentation was substandard. Dr. Burman stated that the nurses' notes addressed the issues of this case. William R. Martin, III, M.D., asked Dr. Burman if there would be more concern if a patient had a previous spontaneous miscarriage. Dr. Burman stated no.

Mr. Connelly made a statement to the Board on behalf of Dr. Burman. Mr. Connelly stated that Dr. Burman has practiced Obstetrics/Gynecology (OB/GYN) for almost 30 years. In that time he has not had one complaint. Mr. Connelly also stated that the State of California Medical Board fully investigated this matter including expert testimony and the case was dismissed. Mr. Connelly referred to findings that the infant suffered an injury due to a fall the mother had approximately 48-72 hours prior seeing Dr. Burman. He said that Dr. Burman noted subtle decelerations early on, but not so extreme to override the patient's desires. Dr. Burman monitored the patient for several hours. During that time he did recommend that a C-Section would be best for this infant. Mr. Connelly requested that this case be dismissed.

Dr. Barricks stated that he found inconsistencies in regard to no protocols for fetal distress that are accepted by an obstetric community. Dr. Barricks questioned why, if Dr. Burman did not find fetal distress, he would suggest a C-Section.

Dr. Haas recommended that the Board support a finding of Unprofessional Conduct in violation of A.R.S. § 32-1401(26) "Unprofessional Conduct" includes the following, whether occurring in this state or elsewhere: (II) Conduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient. Dr. Haas clarified the Unprofessional Conduct is for the neurological damage to the infant by prolonged fetal distress. The standard of care would be to properly identify, manage, and expedite the delivery of a fetus in a distressed state. The prolonged fetal distress was a large portion of the outcome. Tim B. Hunter, M.D., and Dr. Schwager both recommended A.R.S. § 32-1401(26)(q) because the reasons for injury are not clear. Dr. Haas agreed and amended her recommendation to be in violation of A.R.S. § 32-1401(26)(q) Conduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient.

MOTION: Ingrid E. Haas, M.D., moved for a finding of Unprofessional Conduct for the neurological damage to the infant by prolonged fetal distress, in violation of A.R.S. § 32-1401(26) "Unprofessional Conduct" includes the following, whether occurring in this state or elsewhere: (q) Conduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient.

SECONDED: Ram R. Krishna, M.D.

Dr. Schwager stated that the issue is that the documentation of what Dr. Burman states happened is not in the record and there is no evidence that the actions actually occurred. Dr. Martin stated that a physician cannot document everything, but in this case, there is nothing documented for the refusal for a C-Section. Dr. Schwager stated that the patient's chart does indicate a plan for C-section, but it was never carried out. Dr. Connell concurred with Dr. Martin. Dr. Connell also stated that he does not believe that Dr. Burman met the standard of care.

VOTE: 11-yay, 0-nay, 1-abstain/recuse, 0-absent

MOTION PASSED.

Dr. Haas expressed concern about the lack of documentation and recommended that the Board support an Advisory Letter for poor management of fetal distress.

FORMAL INTERVIEWS (Continued) – MICHAEL H. BURMAN, M.D.

MOTION: Ingrid E. Haas, M.D., moved to issue an Advisory Letter for poor management of fetal distress. A.R.S. § 32-1401(3)(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

SECONDED: Tim B. Hunter, M.D.

Dr. Megdal questioned Dr. Haas regarding the finding of Unprofessional Conduct and her recommendation for a non-disciplinary action. Dr. Haas stated that there has been Unprofessional Conduct, but with the evolution of the case presented today an Advisory Letter would be appropriate.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., William R. Martin, III, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., and Chris Wertheim. The following Board Member voted against the motion: Patrick N. Connell, M.D. The following Board Member abstained the motion: Robert P. Goldfarb, M.D.

VOTE: 10-yay, 1-nay, 1-abstain/recuse, 0-absent

MOTION PASSED.

TIME-SPECIFIC ITEM

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
4.	MD-04-L100A	L.I.	RICHARD M. WODKA, M.D.	N/A	Accept the Settlement Agreement as written. Respondent Richard Wodka, M.D., allopathic license shall be reactivated; he may not practice direct patient care; may practice administrative medicine and participate in drug development and research pharmacology; Respondent shall not practice direct patient care until such time that Respondent meets with the Board and affirmatively receives the Board's approval to return to clinical practice; The Board may require any combination of staff approved physical examination, psychiatric and/or psychological evaluations or successful passage of the Special Purpose Examination (SPEX) or other competency examination/evaluation or interview it finds necessary to assist it in determining Respondent's ability to safely and competently return to the active unlimited practice of medicine.

Edward J. Schwager, M.D., recused himself from this case. Stephen Wolf, Assistant Attorney General, reviewed the settlement agreement with the Board. The Board members asked questions of Mr. Wolf regarding the settlement agreement. Also, Mr. Wolf stated that the settlement agreement would not include monitoring. He explained that Dr. Wodka completed an inpatient program in the past and has had past and ongoing psychiatric monitoring on a regular basis. Dr. Megdal added that this would be for a limited practice, because of Dr. Wodka's condition. Mr. Wolf explained that Dr. Wodka has been working for a pharmaceutical firm and has been offered an opportunity within that firm, but it would require an active medical license.

MOTION: Becky Jordan moved to accept the Settlement Agreement as written.

SECONDED: Patrick N. Connell, M.D.

VOTE: 11-yay, 0-nay, 1-abstain/recuse, 0-absent

MOTION PASSED.

NON-TIME SPECIFIC ITEMS**Executive Director's Report****Introduction of Agency Lobbyist**

Barry A. Cassidy, Ph.D., P.A.-C, Executive Director, introduced Stuart Goodman to the Board Members as the Board's new Agency Lobbyist. Mr. Goodman was an advisor to Governor Hull. Dr. Cassidy reviewed Mr. Goodman's background with the Board. Becky Jordan welcomed Mr. Goodman. Sharon B. Megdal, Ph.D., stated that Mr. Goodman and his firm would provide good representation for the Board.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
22.	MD-03-1241A MD-03-1241B MD-03-1241C	L.S.	WILLIAM V. DOLAN, M.D. EUGENE ROSS, M.D. M. KEITH PIATT, M.D.	11468 3889 18729	Uphold the Executive Director's Dismissal.

NON-TIME SPECIFIC ITEMS (Continued) - WILLIAM V. DOLAN, M.D., EUGENE ROSS, M.D., M. KEITH PIATT, M.D.
William R. Martin, III, M.D., recused himself from this case.

L.S. made a statement at the call to the public. He submitted materials to the Board and reviewed these materials with the Board Members. L.S. stated that patient J.S. died of a heart attack. L.S. asked how much Unprofessional Conduct and Moral Turpitude the Board will permit. L.S. reviewed "ethics" with the Board. He also reviewed that when patients are unable to make decisions on their own, another person can be given that right on the patient's behalf.

William V. Dolan, M.D., made a statement at the call to the public. He is a general surgeon at the Veterans Affairs (VA) Hospital in Phoenix. He stated that there has been no violation of the Medical Practice Act. J.S. was very sick and his nutrition was not well. Dr. Dolan stated that the surgical judgment for J.S. was appropriate. The options were discussed with L.S. who is also a physician. Dr. Dolan stated that L.S. had informed him that he knew his father was in his last days and also that J.S. was terminal. Dr. Dolan and L.S. both agreed that comfort care would be better for J.S. Dr. Dolan stated that money was never an issue.

William Kennell, M.D., Board Medical Consultant, reviewed this case with the Board. Dr. Kennell stated that there were significant comorbidities that were carefully evaluated by the VA hospital. Dr. Kennell stated that there is reasonable evidence that the patient was a non-operable patient. Tim B. Hunter, M.D., inquired about the allegation that Dr. Dolan blocked the transfer of the patient. Dr. Kennell stated that through the department of surgery at the VA Hospital they would not approve the funding for the transfer. However, the transfer did take place. Dr. Krishna stated that he does not believe the standard of care was violated. The patient was not a candidate for surgery at that time because of his condition.

MOTION: Ram R. Krishna, M.D., moved to uphold the Executive Director's dismissal.

SECONDED: Dona Pardo, Ph.D., R.N.

VOTE: 11-yay, 0-nay, 1-abstain/recuse, 0-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
40.	MD-03-0378A	AMB	JOHN S. TRUITT, M.D.	21749	Motion for Rehearing or Review Denied.

D.B. made a statement at the call to the public. He read a statement from a physician from Casa Grande, who was not able to attend today's meeting. The physician submitted an anonymous complaint because of Dr. Truitt's vindictiveness. He is now coming forth publicly because of the importance of this case. The patient involved in this case was brought back to Casa Grande Oncology without his approval. He refuses to lie on Dr. Truitt's behalf. He informed Dr. Truitt that it would be wrong to treat this patient because there was no clear evidence of brain metastasis. D.B. stated that the physician believes Dr. Truitt misled this Board and treated the patient to gain money.

Ram R. Krishna, M.D., stated that there was no new evidence on this case and the action taken by the Board was warranted.

MOTION: Ram R. Krishna, M.D., moved to deny the Motion for Rehearing or Reviewed of this case with the Board.

SECONDED: Douglas D. Lee, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
49.	MD-02-0019A	K.R.	MARC A. LETELLIER, M.D.	18410	Rescind Referral to Formal Hearing and Issue an Advisory Letter for failing to diagnose the possibility of osteomyelitis. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

Sara Regan, from Lewis and Roca, attorney for the State, reviewed this case with the Board.

The Board Members expressed concern that Dr. Letellier declined to come to formal interview with this Board and opted for a formal hearing, using this as a stall tactic. Sharon B. Megdal, Ph.D., stated that if the Board has the evidence an option would be to allow this to go to formal hearing and not rescind the referral to formal hearing. Tim B. Hunter, M.D., recalled this case and stated that the radiologist also involved with this case received an Advisory Letter because he

NON-TIME SPECIFIC ITEMS (Continued) - MARC A. LETELLIER, M.D.

misread the x-rays. Dr. Hunter expressed concern about enough evidence for this case to prevail at a formal hearing. He would support rescinding the referral to formal hearing and issue the Advisory Letter.

MOTION: Tim B. Hunter, M.D., moved to Rescind Referral to Formal Hearing and Issue an Advisory Letter for failing to diagnose the possibility of osteomyelitis. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

SECONDED: Patrick N. Connell, M.D.

Dr. Krishna disagreed with the motion. He stated that he was concerned about the follow-up care of this patient. Dr. Krishna stated that there was negligence involved and that there would be enough evidence for a formal hearing. Robert P. Goldfarb, M.D., stated that he disagrees with the stall tactics used, but agrees with the Advisory Letter. Dr. Schwager stated that he would support an Advisory Letter because of the lack of evidence in the case.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., and Chris Wertheim. The following Board Members voted against the motion: Ram R. Krishna, M.D. and Douglas D. Lee, M.D. The following Board Members abstained the motion: Robert P. Goldfarb, M.D., William R. Martin, III, M.D., and Sharon B. Megdal, Ph.D.

VOTE: 7-yay, 2-nay, 3-abstain/recuse, 0-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
34.	MD-02-0138A MD-02-0138B	AMB	ROBERT M. SIEGEL, M.D. ASHOK GARG, M.D.	16175 27507	Dismissed.

William Kennell, M.D., Board Medical Consultant, reviewed this case with the Board. This case involved the decision to implant an automatic defibrillator and the criteria for doing so. Dr. Kennell stated that this case is outside of the scope of his practice and he is unable to inform the Board Members of the direction of this case. Ram R. Krishna, M.D., stated that the Outside Medical Consultant's opinion is very clear. The patient might have been compromised, but the procedures used were appropriate. Dr. Krishna recommended that this case be dismissed.

MOTION: Ram R. Krishna, M.D., moved to dismiss this case.

SECONDED: William R. Martin, III, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

Chair's Report**ED Performance Evaluation Follow-up**

Edward J. Schwager, M.D., stated that the original evaluation was done in executive session. Cherie Pennington, Director of Human Resources, informed him of Barry A. Cassidy, Ph.D., P.A.-C, Executive Director's wish to discuss this matter in open session.

MOTION: Edward J. Schwager, M.D., moved to go into executive session at 3:46 p.m.

SECONDED: Ram R. Krishna, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

The Board returned to open session at 4:04 p.m.

Dr. Schwager stated that the Board met in May of 2004, in executive session, about the Executive Director's performance evaluation. Soon afterwards he met with Dr. Cassidy to share the summary of the evaluation with him. Dr. Schwager noted the summary as follows: 1) the Agency was functioning at a high level relative to licensing and information technology; 2) there was an overall improvement in investigations with a change in the focus of medical consultant reports; 3) the 360 evaluation suggested a disconnect between the Director's perception of his communication skills and teamwork development and Staff's perception of these same items; 4) Staff turnover appeared high, including ongoing turnover after the Director's initial 12 months of employment; 5) working relationships with the Governor's Office and the Legislature appeared to be weak; and 6) working relationship with the Board's Legal Counsel has recently been taxed.

At this meeting the Director expressed concerns regarding his working with Board Counsel. At that time it was the Board's recommendation that the Director determine a benchmark for turnover rate in government agencies and medical boards

NON-TIME SPECIFIC ITEMS (Continued) – CHAIR'S REPORT

of similar size; establish a goal for employee turnover and report the benchmark and goal to the Board no later than the August 2004 meeting; that the Director maintain a professional working relationship with Board Counsel and; that the Director should further his management and communication skills by attendance and participation in appropriate workshops or seminars. The Board's overall anticipation was that the Board would then evaluate the Director's performance at the December 2004 meeting. Dr. Schwager asked Dr. Cassidy for an update. Dr. Cassidy stated that he is scheduled to attend a seminar from September 29 through October 1. He also shared the results of his research regarding employee turnover rates for state, federal, and county governments. However, he expressed his concern about having difficulty establishing a goal regarding situations that are out of his control, such as employees leaving for multiple reasons like moving out of state or obtaining another job. Dr. Cassidy stated that although there has been a turnover at the Board, productivity has increased for both fiscal years 2003 and 2004. Dr. Cassidy reviewed the time frames of cases and numbers with the Board. In regard to the Board's Counsel, Dr. Cassidy stated that he, Barbara Kane, Assistant Director, Gary Oglesby, Chief Information Officer, and Randi Orchard, Chief Financial Officer, met with Christine Cassetta, Board Counsel, Mary O'Grady, Solicitor General and Mary Jo Foster from the Solicitor General's office and had a productive conversation. He and his staff work hard at maintaining a professional relationship with Board Counsel. Sharon B. Megdal, Ph.D., commented that she has been concerned about staff turnover for years, pre-dating the present Executive Director. Dr. Megdal asked Dr. Cassidy and/or Ms Pennington whether exit interviews were conducted for all Staff that depart the Agency. Dr. Cassidy answered in the affirmative and stated that was part of the HR process. Dr. Megdal asked if the Board could see the instrument used and a summary of the results. Dr. Cassidy was asked if he consulted with Board Counsel on a routine, regular basis. Dr. Cassidy stated that he absolutely does so and he has not changed that at all, sometimes consulting three times a day and sometimes every third day. Dr. Cassidy acknowledged that Board Counsel was once considered a part of the executive management team, but is no longer because he did not believe that she was part of his team. Dr. Cassidy stated that Board Counsel represents an outside agency; therefore he does not consider her as part of his team. Dr. Cassidy stated that Board Counsel does have sufficient and timely access to the information she needs to represent the Board. Dr. Megdal noted that Board Counsel had informed the Board at a previous meeting that she was not getting the minutes to review in advance and asked whether there had been a change in access to information. Dr. Cassidy said there had been no change in access to information and urged the Board to talk to his senior staff.

Mary O'Grady, Solicitor General, appeared before the Board. She informed them that a meeting was held near the end of July of 2004 at her initiation because she was concerned that there was a lack of communication between Staff and Board Counsel and this could affect Board Counsel's service to the Board. Ms. O'Grady stated that she believed we were in a rebuilding mode in terms of communication. Also, she was concerned about whether questions that would need answers from Board Counsel were being asked of Board Counsel and whether issues would be spotted appropriately. Ms. O'Grady noted her concern that Board Counsel was not getting the inquiries she used to. Ram R. Krishna, M.D., recalled that Legal Counsel was arranged for the Board with the Attorney General, who is now the present Governor. The Litigators were to represent the Attorney General's Office and Board Counsel was to assist the Board. Dr. Krishna stated that it was also determined the Executive Director would also have access to Board Counsel. Dr. Krishna asked Ms. O'Grady if those were the limits as it stands now or does Board Staff have direct access to Board Counsel. Ms. O'Grady noted that Board Counsel's responsibilities include answering routine inquiries made by Staff, the Executive Director and Senior Staff and advising the Board. Ms. O'Grady stated that the Executive Director has informed her that requests for legal advice from Board Staff should go through the chain of command. Ms. O'Grady said her concern was to make sure the question gets answered, the person gets the information and, that as you go up the chain of command, nothing is lost in translation. Dr. Cassidy was asked whether Senior Staff are free to talk to Board Counsel. Dr. Cassidy said that it depended on which Senior Staff the Board was talking about. Dr. Cassidy clarified that the vast majority of legal advice is related to cases in particular and that he speaks with Dean Brekke, Assistant Attorney General, regarding case specific related issues sometimes five times per day. Dr. Cassidy reminded the Board that there has also been an increase in the number of cases, explaining the contact with Mr. Brekke. For non-case specific items such as Licensing or Board Operations questions, Board Counsel is consulted. Dr. Cassidy also reiterated that a large portion of the day-to-day issues of the agency do not have anything to do with Board Counsel. Dr. Cassidy was asked to elaborate on why Board Counsel was no longer part of the executive team and whether he believe Board Counsel was important enough to be part of executive day-to-day operations. Dr. Cassidy stated a large portion of what happens has nothing to do with Board Counsel. Dr. Cassidy noted that when his management team puts together policies they are all reviewed by Board Counsel after they are put together and he is not excluding Board Counsel from reviewing those things that impact Agency operations.

Chris Wertheim inquired about the agency's employee turnover. Ms. Pennington stated that the turnover was sixty-five percent for the 2002-2003 fiscal year and thirty-four percent for the 2003-2004 fiscal year. Ms. Wertheim inquired how many Investigators the agency has. Dr. Cassidy stated that the Medical Consultants, the agency's Medical Investigators and cover eighty percent of the cases that come into the Board - quality of care cases. Ms. Kane noted that the Board has seven senior medical investigators and six medical consultants who are considered investigators as well. Dr. Cassidy urged the Board to hear from Board Staff about the caseload and the ability to keep up with it. He stated that the Board is operating at the most efficient level it has ever operated at. He also stated that the agency worked closely with personnel

NON-TIME SPECIFIC ITEMS (Continued) – CHAIR'S REPORT

and the Employment Law section of the AG's office prior to letting personnel go. Dr. Cassidy stated that he does not believe there is any backlog of cases whatsoever.

The Board Members discussed the agency's strategic plan and the numbers it reflects. Dr. Cassidy noted that the numbers had increased because the Board is now tracking every piece of paper that it never tracked before and that the volume had increased significantly. Dr. Cassidy stated that he is using the same methodology for calculating the number of complaints that was used in 2003. Dr. Connell noted his concern that when he came on the Board seven years ago there were 1200 cases reported as open and it appears the Board has gone back to where it was in 1997. Dr. Connell also noted concern that the strategic plan has "unknown" as the projection for the next fiscal year as to how many open cases there will be. Dr. Cassidy said that this was because he had changed the methodology to account for every case that comes in. Dr. Schwager noted that the 2004 numbers are not all that different from 2003 when the methodology was different and that the Director begs the issue in part that if the number is going up there has to be a problem if it stops at investigations. Dr. Cassidy noted that the Board's October agenda is full and December is looking full.

Dr. Megdal asked Ms. O'Grady if the professional relationship between the Executive Director and Board Counsel was working properly. Ms. O'Grady stated that she had concerns. Ms. O'Grady noted that the split of responsibilities between Board Counsel and the Litigators makes sense. There are other ways to structure it, but Litigator's working on cases and Board Counsel available for the day-to-day questions and available for the Board Members works for this Board and all counsel understand the split and work well together. Ms. O'Grady mentioned concern that Board Counsel was not being given access to information, which was preventing her from issue spotting and obtaining the whole picture for the Board Members. Ms. O'Grady noted that there was a problem in Board Counsel's relationship with the Executive Team and that she believed Dr. Cassidy would acknowledge that as well. Dr. Cassidy stated he would not. Ms. O'Grady expressed concern about a marked difference in the types and number of inquiries being received and she is certain the legal questions have not gone away. Dr. Krishna suggested that if there is no specific guidelines set for Board Counsel, maybe there should be. Then there would be no question of the duties of Board Counsel, breaking things down into tasks. There has just been a general explanation of responsibilities in the past. Ms. O'Grady expressed concern that Board Counsel sees policies after they are written, but the Board would benefit greater if Board Counsel was involved during the development process rather than after for a better understanding of them. Dr. Krishna reminded the Board that this was a new job created for Board Counsel that was left open-ended. He again suggested specific guidelines, in writing, for the benefit of all, for example the involvement with management.

Dr. Connell asked Ms. O'Grady if Dr. Cassidy had ever asked that the position of Board Counsel be eliminated. Ms. O'Grady stated he had not. Dr. Connell then asked whether Dr. Cassidy had asked that Ms. Cassetta be reassigned and the Board receive a new Board Counsel. Ms. O'Grady noted that conversation had occurred in the spring and she declined to do so. Mr. Brekke was asked questions regarding his communications with Dr. Cassidy. He noted that the conversations were really on case-specific issues because he and the others are getting involved earlier on in cases. Mr. Brekke noted that the normal questions that should be asked of Board Counsel are not being asked of him either. Dr. Martin expressed concern that if Mr. Brekke is not being asked questions normally asked of Board Counsel and Board Counsel is not getting the questions who is. Dr. Cassidy said that the same amount of questions are being asked of Board Counsel, though he has significantly increased the use of the Litigators. He noted that in the past Board Counsel had gotten more involved in investigations and that all that has been taken away from Board Counsel are investigation specific cases and if she perceives a decrease in volume of questions it is because they involve litigation specific cases.

Dr. Megdal asked Dr. Cassidy if he could have a good working relationship with Board Counsel. Dr. Cassidy noted he can have a professional relationship with anyone and the parties are working very hard to maintain a professional relationship. Dr. Megdal was asked why he then asked for her to be transferred. Dr. Cassidy said that was back in December and he didn't ask recently.

Dr. Schwager referred to the exit interviews mentioned by Dr. Cassidy and asked if Ms. Pennington was the one doing the exit interviews. Ms. Pennington stated that while the goal is to have exit interviews for all employees that really has not been the practice. She noted that when she has given employees a written exit interview, it has not been returned. Dr. Schwager discussed with Ms. Pennington and Ms. Kane the reason why Sandra Waitt, the previous Management Analyst, left the agency. Dr. Schwager noted that she gave Dr. Schwager a reason different from that relayed by Board Staff, including the direction of management. Dr. Cassidy noted that what Dr. Schwager relayed regarding Ms. Waitt's departure is totally incongruous with what he knew and asked the Board to solicit opinions from Staff as to whether that really existed. Dr. Schwager noted that all of the employees worked at Dr. Cassidy's will and he did not know whether they would or would not be open to speak freely, that it makes it more difficult.

Dr. Schwager inquired about the tenure of the Investigations Staff. Ms. Kane looked into this and informed Dr. Schwager that the average was 4.3 years. Also, she stated that this did not include the Medical Consultants, who are now the Investigators for the quality of care cases. Dr. Cassidy also reminded the Board Members of this change. Dr. Schwager

NON-TIME SPECIFIC ITEMS (Continued) – CHAIR'S REPORT

stated that he does not believe that Medical Consultants would be considered Investigators. Dr. Krishna suggested waiting until December 2004 as previously recommended to re-evaluate this situation and for a more detailed discussion. Dr. Goldfarb complimented the Medical Consultants stating that their work has been superb over the last year or two and has increased the Board's effectiveness. Dr. Schwager asked senior Board Staff for their comments. Beatriz Garcia Stamps, M.D., M.B.A., Medical Director, stated she goes through the chain of command for legal advice from Board Counsel and has had no problems. Mr. Oglesby touched on employee turnover in his division. Also, he explained that there had been external pressure, and some people were almost making it a hostile work environment. Ms. Kane stated she came to the Board with a tremendous amount of background. She stated that in the past, no one cared if the Board Members had all of the information or not. They just wanted to make the case. Ms. Kane stated that she stayed in the background and would telecommute from home for this reason and it allowed her to do her own quality work. She stated that when Dr. Cassidy came to the Board as Executive Director, she saw someone who cared about the work being done so that the complainant and physician had equal standing. Ms. Kane noted that she remembered that when Rick Albrecht was Board Counsel, Claudia Foltz, the previous Executive Director, had all Board Staff go through her first prior to seeking Board Counsel's legal advice. Ms. Kane noted she started a training program and Board Counsel was included. Ms. Kane noted that where it's relative and where it works, Board counsel is included. She noted that she asked Board Counsel to put together a training session before the Off-Site and it wasn't done until just before the meeting with Ms. O'Grady.

Dr. Schwager noted that part of the reason of having Board Counsel in-house is for her to be able to know enough about what is going on, to be almost a fly on the wall. Dr. Schwager asked Christine Cassetta, Board Counsel, to respond to some of the comments made. Ms. Cassetta expressed to the Board that since the May 2004 Meeting, it has been a difficult environment for her and the day-to-day communication has shut down. She noted that her contacts with the Director are more accurately noted as three times a week or maybe every two weeks and there is no information flow. She noted she has been cut off and a chain of command has been established and she has concerns because she understands that if Board Staff goes through the "chain of command" and senior staff believes it has answered the question, she does not get the question even though the answer given may be incorrect. She also expressed concern about the ability to perform some of her essential functions. For instance, agendas are being published and sent to the Board when she has not reviewed them and that this may raise liabilities for the Board. She noted that in the past she was consulted as the agenda was built and because she is no longer consulted there have been issues with the Board's last three meetings, including this meeting. Also, she stated that the review of the minutes has been an inconsistent process and there were many sets of minutes that she was not given to review. Also, a "proposed process" e-mail sent to her after the meeting with Staff, herself and Ms. O'Grady stated that staff would review her edits and decide whether they would be accepted. After reading the e-mail a light-bulb went off in her head and she reviewed the minutes she submitted for approval at this meeting and noticed that edits she had made to the minutes that had been returned by the Board from the last teleconference because she had not edited them, had been rejected by staff without her knowledge. Ms. Cassetta noted that the minutes are very important because they are the official record of what the Board has done. She noted that she does make corrections that are not the literal word spoken by the Board because sometimes when the literal spoken word is written it is not grammatically correct.

Ms. Cassetta also brought up rules and legislation and noted that she was not consulted on pending rules and that she did not even know that there was a new Lobbyist retained for the Board, even though she had inquired about the status of the rules in late July. She stated that the first meeting she was included in for months was last week with Patrick N. Connell, M.D., and the new Lobbyist, Mr. Goodman and that she had been invited to this meeting only after having spoken with the Chair about placing this matter on the agenda. Ms. Cassetta also told the Board that although Dr. Cassidy told Ms. O'Grady and herself at the July meeting that she would see policies before they were implemented, and told the Board the same thing a bit earlier, she was just given a policy yesterday that she had never reviewed before it was approved. The policy deals with reporting to the National Databanks and is incorrect.

Ms. Cassetta noted that since she began representing the Board over three years ago she had been included on an e-mail list called "all-staff." E-Mails sent to this address informed Staff of new hires, persons who had left the agency, and of phone listings, among other things. Ms. Cassetta noted that she and her assistant had been removed from this list some time ago. Ms. Cassetta noted she sent an e-mail to the Director saying it was important for her to have this information, but she got no response. The first phone list she received was the day after she spoke to the Chair. Ms. Cassetta noted that she has been trying very hard and that Mr. Brekke is often used against her. For instance, she will be told Mr. Brekke said "X", and then when she has discussed the issue with Mr. Brekke, he says he said "Y". Ms. Cassetta noted there was a case on the agenda for this meeting where this happened and she would discuss that with the Board when they handled the case.

Ms. Cassetta noted that her impression was that the Director responded to her giving information to the Board, as was her legal and ethical duty, by removing her from everything. Ms. Cassetta noted that the Litigators have observed and heard things and are available to speak to the Board. Ms. Cassetta noted that her contact information was left off of a internal

NON-TIME SPECIFIC ITEMS (Continued) – CHAIR'S REPORT

web help site for Board Members, and she was only made aware when Dr. Megdal raised the issue. She noted that Ms. Waitt told her she had been chastised for coming directly to her with an issue they had worked on for a long time. Ms. Cassetta noted that when she tried to verify if the Director had gotten proper notice for this meeting, she and her assistant could not get an answer to that simple question for hours.

Ms. Cassetta referred to Dr. Krishna's statement about having an outline of specific duties. She stated that she has been the Board's Counsel for over two and a half years and there has never been an issue regarding her duties until this past December. Ms. Cassetta also stated that she and the Executive Director worked well together for a year and a half and she does not think this is a personality issue. She noted that the Director does ask her questions, but the volume of questions is nowhere near what it was. Ms. Cassetta also addressed the Director's statement that the change was because she used to be involved in investigations. She noted that this is saying she engaged in Unprofessional Conduct. Ms. Cassetta stated that she knows the questions she can and cannot answer and has never crossed the line – she noted that the Director has a misunderstanding of the split of responsibilities.

Ms. Cassetta then addressed other comments made earlier, including Ms. Kane's representation that counsel was involved in the training she had done. Ms. Cassetta noted that none of the Board's attorneys were consulted on or included in the training and she was asked only to address two statutory subsections and she expanded on that in the one training session she conducted. Ms. Cassetta noted that she does not know the Board's current process, she used to know, but no longer does. Ms. Cassetta noted that if this was a personality issue and all was well with the Agency, so to speak, she would have left a long time ago. She noted that she has an ethical duty and a loyalty to the Board that has prevented her from doing so.

Ms. Cassetta also noted that she is no longer being given the Board's newsletter to review before it is published and she is aware that there is an attempt to use the newsletter in litigation involving the Board. Douglas D. Lee, M.D., asked Ms. Cassetta what type of resolution she would have to this problem. Ms. Cassetta stated that she did not know. She felt that things changed between her and the Executive Director after December of 2003. Ms. Cassetta noted that the Director had apparently drawn a line in the sand and she was placed on the Board side and he specifically related to Ms. O'Grady that he did not want her as Board Counsel because he could not trust her. Ms. Cassetta noted that Staff in the room probably had their jaws on the floor because they know nothing of what is going on and that she comes in every day prepared to do her job and has not let on that there is a problem. She noted that she has practiced law for over thirteen years and the last 9 months have been the most difficult.

Mr. Oglesby stated that the process for reviewing the agenda and minutes is currently in the process of being refined and that Ms. Cassetta has the opportunity to make corrections after the Board receives the material. Ms. Cassetta reiterated that the issue is not when she receives the material, but rather that since she is no longer consulted as the agenda is being built, she does not have the opportunity to make corrections before the physician is noticed and before the Board receives the CD. She also stated that certain errors in recent months may create liabilities for the Board. She stated that getting it afterwards is not going to help. Mr. Oglesby noted that staff prepares the minutes from the literal wording of what happens at the meeting and only will include exactly what was said. Ms. Cassetta pointed out that when she edits the minutes, she does so to capture the essence of the conversation versus the literal words spoken to explain the action that the Board has taken and that the minutes are not meant to be a verbatim transcript of what occurred. Ms. Cassetta noted that she does not believe she is not the end-all, be-all on minutes, but she would appreciate Staff telling her they think something may be incorrect before making any change.

Dr. Cassidy commented that what he has heard are a series of half-truths, he cannot say they are mistruths, but they do not represent what has been going on. He stated that you couldn't give someone a CD before it is assembled. Once a CD is finished, then everyone needs to evaluate it. Dr. Cassidy stated that Board Staff also has an ethical duty to correct misstatements or mistruths found in the minutes and correct them. You cannot edit the minutes to reflect something that was never said.

Ms. Wertheim recommended putting this matter on an agenda for action in a month for the discussion of continuation of employment of the Executive Director. Dr. Megdal stated that it seems the relationship between Board Counsel and the Executive Director has gotten worse. She suggested discussing a resolution to this matter at a future meeting, because it is important to operating an effective Board. Dr. Megdal also noted she is concerned about Staff turnover without exit interviews being returned and assembled. Ms. Wertheim stated that the Governor's Office and Legislature are concerned about what is going on with this Board. Dr. Krishna reiterated again that a delineation of duties for Board Counsel may help. He also reminded the Board that six years ago, before the Board Counsel was in place, they had access to Litigator Counsel. Dr. Krishna stated that there were also problems then between that Executive Director and Litigator Counsel pointing fingers at each other. Dr. Krishna commented that although this is an internal rift happening he believes the Arizona Medical Board is functioning well and the quality of the investigations are excellent. Dr. Krishna stated there is a problem between Board Staff and Legal Counsel and recommended that the Board set forth a detailed outline. Dr.

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Schwager noted that he had fairly extensive conversations with the Solicitor General and he feels it is difficult to delineate specific responsibilities.

Dr. Hunter expressed frustration because the agency is better than it was before. He complimented both Dr. Cassidy and Ms. Cassetta for superb jobs. Dr. Hunter moved that the Board complete the Executive Directors evaluation at the October meeting and decide retention and salary at that time. Dr. Lee seconded the motion.

MOTION: Tim B. Hunter, M.D., moved for continuance of the evaluation and discussion and vote for continued employment and salary review at the October 2004 Board Meeting.

SECONDED: Douglas D. Lee, M.D.

Dr. Connell noted that this would be unfair because Dr. Cassidy has said Ms. Cassetta is lying and he can't imagine them being able to now work in a collegial fashion and would like to consider this matter sooner. Dr. Hunter noted that he thinks it is unfortunate for both of them, but the Board obviously cannot finish at this meeting. Dr. Krishna stated that he did not think the Board would be able to decide by October if there is no delineation of Board Counsel duties. Dr. Hunter noted that he does not believe there is any need for a delineation of duties because it is pretty well understood by the parties and there has not been a problem with that until recently.

William R. Martin, III, M.D., stated that he shared Dr. Hunter's frustrations and has the utmost respect for Ms. Cassetta and Dr. Cassidy. He sees this Board served well by both parties. He would favor a mediation process. Dr. Megdal noted that she echoes Dr. Martin's comments and commented that she has been around public boards and commissions and has run a government agency. She noted that one of the hardest things to do is write minutes. Dr. Megdal noted that the changes Ms. Cassetta makes are absolutely appropriate because minutes are not a verbal transcript and are the essence and intent of the discussion and the meeting. Dr. Megdal said the problem may have to do with the backgrounds of people in the agency, including the Executive Director, who have not had a long tradition in government. Dr. Megdal noted that some training may bring the two perspectives together. She noted that the problem is simply lack of experience in what it means to run a government agency.

Dr. Schwager noted that the motion on the floor was for the continuance of the evaluation and discussion and vote for continuing employment and salary review for the October meeting.

VOTE: 8-yay, 3-nay, 1-abstain/recuse, 0-absent

MOTION PASSED.

Robert Barricks, M.D., Board Medical Consultant, asked if Board Staff could somehow voice their feelings by some form of communication to the Board Members. Victoria Mangiapane, Assistant Attorney General, confirmed with Dr. Schwager that it is at the discretion of the Board Members and it is up to the Board Members what they choose to do with that information.

The meeting adjourned at 6:40 p.m.

THURSDAY, AUGUST 12, 2004

CALL TO ORDER

Edward J. Schwager, M.D., Chair, called the meeting to order at 8:02 a.m.

ROLL CALL

The following Board Members were present: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., William R. Martin III, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., and Chris Wertheim. The following Board Member arrived late to the meeting: Ingrid E. Haas, M.D.,

CALL TO THE PUBLIC

Statements issued during the call to the public appear beneath the case referenced.

FORMAL INTERVIEWS

NO.	CASE NO.	COMPLAINANT v PHYSICIAN	LIC. #	BOARD RESOLUTION
54.	MD-03-0470A	S.B. JOSEPH PETER AIELLO, M.D.	15612	Dismissed.

FORMAL INTERVIEWS (Continued) - JOSEPH PETER AIELLO, M.D.

Joseph P. Aiello, M.D., appeared before the Board with his attorney Peter Wittekind.

Philip Scheerer, M.D., Board Medical Consultant, reviewed this case with the Board. The allegations are that Dr. Aiello performed an unnecessary cataract surgery, followed by yttrium-aluminum-garnet (YAG) surgery, on the patient's left eye. Also, that Dr. Aiello failed to properly document the indications by history or findings for the cataract or YAG laser surgeries.

Dr. Aiello made a statement to the Board. Dr. Aiello reviewed the details of this case. He stated that the patient was referred to him after being struck in the eye by a river rock. He explained the risks of cataract surgery to the patient along with other options. He informed the patient that the pupil would never be right. The patient did see three other physicians and a contact specialist for a diaphragm contact lens. Dr. Aiello did the very best for this individual. He also stated that the patient had the symptoms he is now complaining of prior to meeting Dr. Aiello.

Patrick N. Connell, M.D., presenting Board member, began the questioning of Dr. Aiello. Dr. Aiello confirmed with Dr. Connell that he first noted the cataract on July 1, 1997, and reviewed that particular office visit with Dr. Connell. Dr. Connell reviewed other office visits that Dr. Aiello had with this patient and the information that Dr. Aiello documented in the patient's records. Dr. Connell also discussed with Dr. Aiello the digression of the patient's vision and clarified when it was determined to perform cataract surgery. Dr. Connell asked Dr. Aiello if another physician were to pick up his chart of this patient would they be able to continue with accurate care with the information he included in it. Dr. Aiello stated that he dictated a progress report to the patient's referring physician. Dr. Aiello also stated that he typically has signed consents in the office as well as the operating room.

Mr. Wittekind made a statement to the Board on behalf of Dr. Aiello. Mr. Wittekind stated there was quite a bit of hearsay. There are inconsistencies in what this patient has said. He reviewed the facts of this case with the Board Members. Mr. Wittekind reiterated that this was an elective surgery. Mr. Wittekind explained that the patient has used profanity and demanded money from Dr. Aiello. The risk that he could lose an eye was explained to the patient.

Dr. Connell stated that in his initial review of this case he was leaning for an Advisory Letter. Dr. Aiello could have documented better in his records. However, the letter to Dr. Alvarado does talk about the benefits and risks. Dr. Connell recommended that this case be dismissed.

MOTION: Patrick N. Connell, M.D., moved to dismiss this case.

SECONDED: Ram R. Krishna, M.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., William R. Martin, III, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., and Chris Wertheim. The following Board Member voted against the motion: Douglas D. Lee, M.D.

VOTE: 11-yay, 1-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

NON-TIME SPECIFIC ITEMS (Continued)

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
5.	MD-03-1064A	AMB	RONALD E. PARFITT, M.D.	20680	Advisory Letter for improperly prescribing Xanax and failing to adequately document medication prescribed to the patient. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
7.	MD-03-0117A	AMB	SUSAN P. WARHUS, M.D.	20361	Advisory Letter for failure to identify the signs of fetal intolerance to labor, to timely perform a Cesarean section, and for inaccurate record keeping. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
8.	MD-03-1317A	AMB	CASH R. BEECHLER, M.D.	11021	Advisory Letter for the use of Vaseline gauze to occlude the ostomy site during laser surgery. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

NON-TIME SPECIFIC ITEMS (Continued)

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
9.	MD-03-0704A	AMB	ANDREW J. DODGE, M.D.	15470	Advisory Letter for misdiagnosing an osteoblastoma of the thoracic spine as an osteosarcoma. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
10.	MD-03-1188A	J.J.	JORGE F. O'LEARY, M.D.	10678	Advisory Letter for poor record keeping and misinterpretation of clinical signs and symptoms. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
11.	MD-03-1357A	J.T.	BARTON W. BUTTERBAUGH, M.D.	14268	Advisory Letter for failure to adequately evaluate and treat gonorrhea in a patient with documented exposure. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
12.	MD-03-0290A	AMB	DAVID S. JEVSEVAR, M.D.	24043	Advisory Letter for inappropriate placement of screws in a displaced scapular fracture. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

MOTION: Sharon B. Megdal, Ph.D., moved to issue Advisory Letter's for case numbers 5 through 12, except case numbers 6 and 13, which were discussed individually.

SECONDED: Robert P. Goldfarb, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
14.	MD-03-0726A	D.T.	HAROON I. QURASHI-UL-HAQUE, M.D.	23305	Uphold the Executive Director's Dismissal.

Attorney Jill Covington made a statement at the call to the public on behalf of Haroon I. Quraish-UL-Haque, M.D. She requested that the Board uphold the Executive Director's dismissal of this case.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
16.	MD-03-0924A	J.L.	CHRISTOPHER PUCA, M.D.	22330	Uphold the Executive Director's Dismissal.
17.	MD-04-0080A	P.W.	JENNIFER C. RICHTER, M.D.	31002	Uphold the Executive Director's Dismissal.

P.W. made a statement at the call to the public. He stated that he took his child to the emergency room for breathing problems. The hospital assigned Jennifer C. Richter, M.D. to his child. P.W. stated that before his child could be released Dr. Richter had to examine him and it took only 10 minutes and then he received a bill with a specific code. He asked the hospital and Dr. Richter what they did for 10 minutes that would generate a bill for \$350.00. Since then his bill has been reduced to \$60.00. Just placing a code on a bill to explain the fee is not acceptable for a layman.

Jennifer C. Richter, M.D., made a statement at the call to the public. She stated that she does in-patient pediatric medicine. She stated that she is on staff at Paradise Valley Hospital. The child's pediatrician did not have privileges at this hospital, but requested the hospital admit him. Dr. Richter stated that she used a combined code for admission and discharge for the same day, which is less expensive than using separate charges. Dr. Richter also explained that she reviewed the chart, examined the child and performed other tasks outside the presence of the child or the parent.

Jeffrey Hill, M.D., billing manager at the same practice of Dr. Richter, made a statement at the call to the public. Dr. Hill stated that it is their responsibility to care for any child regardless if they have insurance or not. Dr. Hill explained that the bill itself is within the standards of the community. There is a lot of activity that goes on that does not necessarily occur in the actual hospital/examination room. He stated that the practice has not received one penny for the care provided to this child.

NON-TIME SPECIFIC ITEMS (Continued)

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
18.	MD-03-1132A	M.S.	RICHARD E. LORENZ, M.D.	17477	Uphold the Executive Director's Dismissal.

M.S. made a statement at the call to the public. M.S. stated that Dr. Lorenz came highly recommended for performing a trans flap breast surgery. After her surgery, she had serious healing problems. She was re-hospitalized and treated. After this treatment, she was given a home charge nurse who looked at the wound and refused to touch it. The nurse urged her to go back to the hospital. After three surgeries, she is left with horrible scarring and breasts of unequal size. M.S. stated that Dr. Lorenz informed her that healing takes time, but it has been four years and it is not better. She has even developed a large bulge recently, due to weak stomach muscles. M.S. saw another physician about this who suggested surgery, but because of the outcome with Dr. Lorenz, she opted not to.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
19.	MD-03-0553A	D.A.	ROBERT C. WALDRIP, M.D.	13525	Uphold the Executive Director's Dismissal.

Robert C. Waldrip, M.D., made a statement at the call to the public. He informed the Board he has nothing to add to this case.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
20.	MD-03-0918A	L.V.	GORDI S. KHERA, M.D.	20871	Uphold the Executive Director's Dismissal.
21.	MD-03-0869A	D.F.	RONALD M. LAMPERT, M.D.	17314	Uphold the Executive Director's Dismissal.

D.F. made a statement at the call to the public. She explained her foot condition over the last 14 years resulted from being cashier for a grocery store. She was shocked to discover that her Worker's Compensation was cancelled due to her office visit with Ronald M. Lampert, M.D., and his diagnosis. She was then fired from her job due to filing a false report. D.F. stated that Dr. Lampert was hired by Worker's Compensation for a second opinion. D.F. sought another opinion after obtaining many, which revealed this injury was a direct result of her work activity. Dr. Lampert was the only physician out of ten, who questioned the validity of her condition. She reviewed the Occupational Safety and Health Administration (OSHA) standards that she claims are not provided at her work.

E.F. made a statement at the call to the public. E.F. stated Dr. Lampert is the only physician who misdiagnosed D.F. His wife was fired from her job and this is an injustice.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
23.	MD-03-0950A MD-03-0950B MD-03-0950C MD-03-0950D MD-03-0950E	C.P.	TERRY S. WOOD, M.D. PAUL V. BARANKO, M.D. MICHAEL M. ETZL JR., M.D. DALE A. SINGER, M.D. MICHAEL RECHT	9094 4779 14377 19602 26468	Uphold the Executive Director's Dismissal.

MOTION: Sharon B. Megdal, Ph.D., moved to uphold the Executive Director's dismissal for case numbers 14 through 23, except for case numbers 15 and 22, which were discussed individually.

SECONDED: Robert P. Goldfarb, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
28.	MD-03-1124A	AMB	DONALD L. BUCKLIN, M.D.	14628	Dismissed.
29.	MD-03-0761A	AMB	ALEXANDER ZILBERMAN, M.D.	31136	Dismissed.

NON-TIME SPECIFIC ITEMS (Continued)

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
30.	MD-04-0053A	AMB	W. NEIL CHLOUPEK, M.D.	4553	Dismissed.
31.	MD-03-0848A	D.G.	PAUL A. BABEY, M.D.	20364	Dismissed.
32.	MD-03-1117A	K.D.	DAVID A. RUBEN, M.D.	11382	Dismissed.
33.	MD-03-1299B MD-03-1299C	N.Z.	SAMUEL M. MAGAZU, M.D. GARY M. SOLLARS, M.D.	21012 14550	Dismissed.
35.	MD-03-0017A	AMB	LAURENCE M. SUSINI, M.D.	17611	Dismissed.
36.	MD-03-1028A	D.A.	BRENDA L. SIPES, M.D.	24009	Dismissed.
37.	MD-03-0923B	M.K.	MICHAEL A. LOPEZ, M.D.	27299	Dismissed.
38.	MD-03-0727A	V.D.	HOWARD B. SOMERS, M.D.	11456	Dismissed.
39.	MD-03-1099A	K.S.	JODY B. REISER, M.D.	21445	Dismissed.

MOTION: Sharon B. Megdal, Ph.D., moved to dismiss case numbers 28 through 39, except case number 34, which was discussed individually.

SECONDED: Robert P. Goldfarb, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
42.	MD-03-1039A	AMB	KAREN E. APODACA, M.D.	19568	Accept the Proposed Consent Agreement as written for a Letter of Reprimand and Probation for one-year for failing to properly interpret an EKG.
43.	MD-03-0445A	AMB	PATRICIA EVANS, M.D.	8696	Accept the Proposed Consent Agreement as written to Return to practice of clinical medicine; not practice anesthesia for at least 6 months; may apply to the Board and receive the Board's affirmative approval prior to returning to the practice of anesthesia.
44.	MD-03-0018A	AMB	ALEX M. HORCHAK, M.D.	20134	Accept the Proposed Consent Agreement as written for a Letter of Reprimand for failure to timely repair a damaged ureter that contributed to the death of the patient.

MOTION: Sharon B. Megdal, Ph.D., moved to accept the Proposed Consent Agreements as written for case numbers 41 through 44, except case number 41, which was discussed individually.

SECONDED: Ram R. Krishna, M.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., William R. Martin, III, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., and Chris Wertheim.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

FORMAL INTERVIEWS (Continued)

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
55.	MD-02-0424A	AMB	KERWIN J. LEBEIS, M.D.	16331	Draft Findings of Fact, Conclusions of Law, and Order for a Letter of Reprimand for inappropriately conducting a research project without patient informed consent. Order to UCSD for additional training to address his areas of weakness related to psychopharmacology and treatment planning and that there be satisfactory completion of that course by examination or evaluation. The results of the examination or evaluation must be acceptable to Board Staff prior to vacating the Interim Order; Probation for two years with quarterly monitoring of his records.

Becky Jordan recused herself from this case. Kerwin J. Lebeis, M.D., appeared before the Board without legal representation.

Beatriz Garcia Stamps, M.D., M.B.A., Medical Director, stated that this formal interview is a continuation of a former formal interview. Dr. Stamps stated that as of July 2004 Dr. Lebeis has completed 49.75 hours of continuing medical education (CME).

Dr. Lebeis made a statement to the Board. He explained the CME that he had taken. He expressed his desire to return to practice to help the public.

Robert P. Goldfarb, M.D., presenting Board member, began the questioning of Dr. Lebeis. Dr. Goldfarb stated that Dr. Lebeis has been extremely cooperative with the Board and asked if Dr. Lebeis is ready and able to return to practice and willing to follow the guidelines. Dr. Lebeis acknowledged that he could.

Dr. Hunter asked Dr. Lebeis what his plans were when he is able to return to practice. He would like to pursue psychiatry or other options. He is currently working as a security guard. Dr. Lebeis would be seeking to help people to deal with stress. Dr. Lebeis stated that he has learned his lesson. Dr. Lebeis stated that the CME he took was helpful to him. Dr. Schwager referred to the Physician Assessment and Clinical Education Program (PACE) evaluation that Dr. Lebeis took that noted a weakness in psychopharmacology. Dr. Hunter noted that the overall evaluation was favorable and that Dr. Lebeis scores were among the highest PACE had seen. Dr. Schwager stated that the underlying underperformance was in the area of his practice. PACE recommended that Dr. Lebeis have intensive psychopharmacology training prior to returning to practice. Dr. Goldfarb stated that Dr. Lebeis scored very high and their only suggestion was that Dr. Lebeis return for 5 days of clinical training to address his area of weakness.

Dr. Lebeis made a statement to the Board. He stated that whatever the Board's decision is, he will try to go along with it and try to make the best of what is going on. He has realized that his fate is in the Board's hands. He regrets a portion of the evaluation that he did in San Diego and contributed this to his stress and performance anxiety. He is leaving it to the Board's judgment and has done his best to bring himself up to speed and thanked the Board for their time.

Dr. Goldfarb stated that despite the fact that Dr. Lebeis has been cooperative, the Board must adjudicate the original underlying allegation of Unprofessional Conduct in this case. Dr. Goldfarb recommended that the Board support a finding of Unprofessional Conduct in violation of A.R.S. § 32-1401(26) "Unprofessional Conduct" includes the following, whether occurring in this state or elsewhere: (q) Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public. And (y) The use of experimental forms of diagnosis and treatment without adequate informed patient consent, and without conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee as approved by the federal food and drug administration or its successor agency. Dr. Goldfarb stated that Dr. Lebeis inappropriately conducted a research project where medications were manipulated contrary to manufacture recommendations without patient informed consent and without protocols. Dr. Goldfarb stated that there was harm in that this conduct led to an increase of psychotic symptoms among some patients and led to increased precautionary watches.

MOTION: Robert P. Goldfarb, M.D., moved for a finding of Unprofessional Conduct for inappropriately conducting a research project to where medications were manipulated contrary to manufacture recommendations without patient informed consent and without protocols in violation of A.R.S. § 32-1401(26) "Unprofessional Conduct" includes the following, whether occurring in this state or elsewhere: (q) Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public. And (y) The use of experimental forms of diagnosis and treatment without adequate informed patient consent, and without conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic

FORMAL INTERVIEWS (CONTINUED) - KERWIN J. LEBEIS, M.D.

review by a medical peer review committee as approved by the federal food and drug administration or its successor agency.

SECONDED: Ram R. Krishna, M.D.

VOTE: 11-yay, 0-nay, 1-abstain/recuse, 0-absent

Dr. Goldfarb recommended a Letter of Reprimand for the performance of experimental protocol on patients without informed consent and inappropriately discontinuing psychotropic medication. Dr. Schwager stated that the practice restriction should remain in effect until the successful completion of the UCSD intensive psychopharmacology course and re-evaluation of this area by PACE with a passing score. Dr. Goldfarb amended his motion to include that Dr. Lebeis return to UCSD for additional clinical training to address his areas of weakness related to clinical pharmacology and treatment planning for the five-day course and upon satisfactory completion of that course the previous Interim Order be vacated and Dr. Lebeis be allowed to return to practice. The Board Members discussed the course and determined that upon satisfactory completion of the course be confirmed by examination or evaluation and submit a certificate of that examination or evaluation to Board Staff. Ms. Cassetta suggested that the Board Members instruct staff that the restriction could be lifted once this has been submitted. Dr. Lee concurred.

MOTION: Robert P. Goldfarb, M.D., moved that Board Staff Draft Findings of Fact, Conclusions of Law, and Order for a Letter of Reprimand for inappropriately conducting a research project without patient informed consent. Order to UCSD for additional training to address his areas of weakness related to psychopharmacology and treatment planning and that there be satisfactory completion of that course by examination or evaluation. The results of the examination or evaluation must be acceptable to Board Staff prior to vacating the Interim Order; Probation for two years with quarterly monitoring of his records.

SECONDED: Douglas D. Lee, M.D.

Dr. Megdal clarified that the PACE evaluation recommended that Dr. Lebeis "should" return and asked Board Staff if PACE sometimes uses stronger language. Wendy Nicholson, Senior Compliance Officer confirmed that PACE does use stronger language on occasion. Dr. Megdal stated that Dr. Lebeis scored lowest in psychopharmacology, which is within his area of expertise. She stated that since January of 2004, Dr. Lebeis has taken CME and questioned if the five-day course was overdoing it. Drs. Connell and Hunter agreed. Dr. Schwager stated that Dr. Lebeis' history with the Board is concerning the same issues. Dr. Schwager stated that the Board should make sure that Dr. Lebeis is ready and competent to return to practice. Dr. Lebeis also needs to show that he is able to return to practice. Dr. Schwager stated that there should be a feedback mechanism for the Board to review to determine if Dr. Lebeis retained what he has learned. Dr. Hunter stated that the PACE evaluation has already done this. The evaluation was quite favorable and anything else would be excessive. Dr. Hunter reminded the Board Members that PACE is not requiring a test, but is suggesting one. Dr. Hunter recommended that Dr. Lebeis be allowed to return to practice with monitoring. Ms. Nicholson confirmed for the Board Members that at the conclusion of the five-day training with PACE, there would be an exam of that training, which also includes a one-on-one. Dr. Megdal asked Dr. Lebeis if he would be returning to the practice of psychiatry. Dr. Lebeis said he had not made up his mind yet, but the chances are 50/50.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Ram R. Krishna, M.D., Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., and Chris Wertheim. The following Board Members voted against the motion: Patrick N. Connell, M.D. and William R. Martin, III, M.D. The following Board Member was recused from the motion: Becky Jordan

VOTE: 9-yay, 2-nay, 1-abstain/recuse, 0-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
56.	MD-03-0362A	AMB	JAMES F. YOUNG, M.D.	13067	Dismissed.

James F. Young, M.D., appeared before the Board with his attorney Ronna Fickbohm.

Robert Barricks, M.D., Board Medical Consultant, reviewed this case with the Board. The allegation is that Dr. Young failed to properly manage labor and delivery resulting in a newborn male infant with brain damage.

Dr. Young made a statement to the Board. He explained some errors he made in his statements to Dr. Barricks during the telephonic interview. Dr. Young reviewed the details of this case with the Board.

FORMAL INTERVIEWS (Continued) - JAMES F. YOUNG, M.D.

Ingrid E. Haas, M.D., presenting Board member, began the questioning of Dr. Young. Dr. Young described the structure of the institution where he worked in 1997 when this incident occurred. The care and labor was primarily managed by a family practice physician and he was a consultant. Dr. Young stated that he became involved with this patient the morning after her admission and performed an evaluation at that time. Dr. Young was informed of a 24 hour urine test and that the results would be in that afternoon. He stated that evening the patient elected to rest and that was when the monitor was removed. Dr. Haas asked why the monitor was removed. Dr. Young stated that he never discussed this with Dr. Peterson and never would have authorized that the monitor be removed. He stated that he was shocked when he found out that it was removed and the patient had not been monitored for nine hours.

The Board Members questioned Dr. Young. Dr. Young confirmed for Dr. Goldfarb that the nine hours of no monitoring occurred overnight and reiterated that Dr. Peterson made that decision. Dr. Young stated that Dr. Peterson was trying to make the patient more comfortable. Dr. Young stated that he did not discuss with Dr. Peterson why the patient had to be monitored. Dr. Young stated that he was the consultant on record for this patient. Dr. Young indicated there was a call schedule. Dr. Schwager stated that subsequent to the investigation, the Board received the materials from Dr. Young's attorney. Dr. Schwager asked Dr. Barricks if his opinion had changed after reviewing these materials. Dr. Barricks stated that his opinion did not change. He stated that Dr. Young improperly monitored Dr. Peterson. Dr. Barricks stated that things should be made very clear for a patient who is being cared for and this does not appear to have happened in this particular case. Dr. Krishna asked Dr. Young whether when he was consulted about this patient with mild pre-eclampsia; it was his understanding that if things progressed he or Dr. Peterson would be called to the delivery. Dr. Young stated yes and no. He explained that under normal circumstances he would let family practice do the delivery without him present. However, Dr. Peterson was new to the staff and under an observation period until she had a certain number of deliveries observed and this was next to her last one. He stated that he was planning on being present for the delivery though. Dr. Young explained for Dr. Lee the different stages of pre-eclampsia. Dr. Young explained the changes implemented in the institution because of this situation. Dr. Peterson was a locum tenens physician hired through Comp Health. Dr. Schwager confirmed with Dr. Young that the institution had checked Dr. Peterson's credentials for performing deliveries.

Dr. Young made a statement to the Board. He stated that this case was peer reviewed and no Unprofessional Conduct was found. He has taken steps to improve his practice.

Dr. Haas stated that in reviewing the information that this facility was in a rural area should be considered. She stated that Dr. Young was responsible for supervising the physician caring for the patient. The errors that were made did lead to a poor outcome of the infant, specifically fetal distress or the Cerebral Palsy. Dr. Haas recommended that the Board support a finding of Unprofessional Conduct in violation of A.R.S. § 32-1401(26) "Unprofessional Conduct" includes the following, whether occurring in this state or elsewhere: (q) Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.

MOTION: Ingrid E. Haas, M.D., moved for a finding of Unprofessional Conduct for A.R.S. § 32-1401(26) "Unprofessional Conduct" includes the following, whether occurring in this state or elsewhere: (q) Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.

The motion failed for lack of a second.

Dr. Krishna recommended that in view of the formal interview, the fact that Dr. Young had a family practitioner following the patient and did not have the correct lab results that this case be dismissed.

MOTION: Ram R. Krishna, M.D., moved to dismiss this case.

SECONDED: Tim B. Hunter, M.D.

Dr. Schwager stated that he would support the motion. He stated that he is a family physician and does work with obstetricians. Dr. Schwager stated he does not find any fault with the obstetric consultant, Dr. Young. Dr. Pardo expressed her concern for the nurses who took the patient off the monitor and stated there is also a systems error here too.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., and Chris Wertheim. The following Board Members voted against the motion: Robert P. Goldfarb, M.D. and Ingrid E. Haas, M.D. The following Board Member was absent when this matter was considered: William R. Martin, III, M.D.

VOTE: 9-yay, 2-nay, 0-abstain/recuse, 1-absent

MOTION PASSED.

NON-TIME SPECIFIC ITEMS (Continued)

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
50.	MD-02-0694A	C.P.	WILLIAM D. MARCHESKY, M.D.	15907	Rescind Referral to Formal Hearing accept the Proposed Consent Agreement with an amendment that the required CME be in addition to the normal requirement for licensure; Letter of Reprimand for failure to examine the patient's skin during a physical examination and resulting failure to note the existence of a lesion subsequently discovered to be malignant and removed; failure to follow-up on patient's blood-tinged stool that was subsequently diagnosed as sigmoid colon carcinoma requiring a colonoscopy; Board staff pre-approved continuing medical education (CME) in conducting and recording a patient physical examination and diagnosis/management of screening for cancer; Probation from the effective date of the Order until the CME has been completed.

Sharon B. Megdal, Ph.D., recommended that the proposed consent agreement be amended that the "continuing medical education (CME) in addition to the normal requirement for licensure" be included.

MOTION: Patrick N. Connell, M.D., moved to Rescind Referral to Formal Hearing and accept the Proposed Consent Agreement with an amendment for CME in addition to the normal requirement for licensure.

SECONDED: Tim B. Hunter, M.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., and Chris Wertheim. The following Board Members were absent when this matter was considered: Douglas D. Lee, M.D. and William R. Martin, III, M.D.

VOTE: 10-yay, 0-nay, 0-abstain/recuse, 2-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
51.	MD-99-0010	AMB	JOHN M. KASSENBRICK, M.D.	17245	Rescind Referral to Formal Hearing; Dismissed.

Ann Marie Anderson, Assistant Attorney General, reviewed this case with the Board. William Kennell, M.D., Board Medical Consultant, also reviewed this case with the Board. The allegation was that Dr. Kassenbrock failed to remove a sufficient amount of a xiphoid protrusion resulting in the patient having to undergo a second surgical procedure. Ram R. Krishna, M.D., expressed concern about dismissing this case. Dr. Krishna stated that Dr. Kassenbrock did not complete the surgery and now there is a recommendation to dismiss this case, because it was not properly handled at that time. Beatriz Garcia Stamps, M.D., M.B.A., Medical Director, referred the Board Members to the Outside Medical Consultant's report that states he considered this to be an inadequate operative procedure rather than harmful or dangerous. She stated that the initial procedure was conservative, but not negligent.

MOTION: Robert P. Goldfarb, M.D., Rescind Referral to Formal Hearing and dismiss this case.

SECONDED: Tim B. Hunter, M.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., and Chris Wertheim. The following Board Member voted against the motion: Ram R. Krishna, M.D. The following Board Member was absent when this matter was considered: William R. Martin, III, M.D.

VOTE: 10-yay, 1-nay, 0-abstain/recuse, 1-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
52.	MD-99-0428	AMB	JOHN M. KASSENBRICK, M.D.	17245	Rescind Referral to Formal Hearing and Issue an Advisory Letter for failure to provide adequate discharge orders. A.R.S. § 32-1401(3)(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

NON-TIME SPECIFIC ITEMS (Continued) - JOHN M. KASSENBRICK, M.D.

Ann Marie Anderson, Assistant Attorney General, stated that two out of the three allegations were not sustainable. A consultant in Tucson felt that all three were not sustainable, however, Dr. Cassidy, Dr. Kennell, and herself felt one was sustainable leading to the recommendation for the Advisory Letter.

MOTION: Sharon B. Megdal, Ph.D., moved to Rescind the Referral to Formal Hearing and issue an Advisory Letter for failure to provide adequate discharge orders. A.R.S. § 32-1401(3)(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

SECONDED: Robert P. Goldfarb, M.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., and Chris Wertheim. The following Board Member was absent when this matter was considered: William R. Martin, III, M.D.

VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent

MOTION PASSED.

FORMAL INTERVIEWS (Continued)

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
57.	MD-03-0498A	AMB	THEODORE D. LONDON, M.D.	27819	Advisory Letter for poor documentation on postoperative follow-up. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

Theodore D. London, M.D., appeared before the Board with his attorney Rick Delo.

Robert Barricks, M.D., Board Medical Consultant, reviewed this case with the Board. The allegations are that Dr. London was negligent in the performance of a vaginal hysterectomy and bilateral salpingo-oophorectomy with subsequent injury to ureter, requiring additional surgeries. Dr. London inadequately diagnosed and treated a postoperative complication. Also that Dr. London had poor chart documentation.

Dr. London made a statement to the Board. Dr. London reviewed the details of this case. Dr. London stated the surgery occurred January of 2001. There was bleeding that was not controlled leading to a laparotomy to control the bleeding. Also, the patient refused to have a blood transfusion postoperatively. Indigo Carmen was given via IV to check for injury of the ureter and no leaking of the dye was spotted. A lap sponge was missing and an x-ray was taken that revealed the sponge was left inside the patient. An incision was made to remove the lap. The repair was not done due to the patient's condition. Also, the patient refused to receive a blood transfusion. Post-operatively the patient was afebrile doing good and had no unusual pain. He reviewed chronological visits with this patient including a visit to the emergency room. He does not believe the ureter was severed during her initial surgery, specifically because there was no leakage after the Indigo Carmen and no dye was spotted. A stitch may have been placed to close to the ureter causing the subsequent necrosis and then leak of the urine.

Ingrid E. Haas, M.D., presenting Board member, began the questioning of Dr. London. Dr. London performs approximately 3 to 4 vaginal hysterectomies per month using the straight vaginal method the majority of the time. Dr. London estimated a couple of hundred cubic centimeters (cc's) of blood in the patient's abdomen. Dr. Haas asked Dr. London what the patient's nausea and diarrhea would be a result of. Dr. London stated he thought it was her pelvic hematoma. Dr. Haas questioned Dr. London if he would do anything different now. He stated he would have gotten the IVP then or later afterwards.

The Board Members questioned Dr. London. Dr. Lee asked if he had a high suspicion for a ureteral injury. Dr. London stated no.

Mr. Delo made a statement to the Board on behalf of Dr. London. Mr. Delo stated that Dr. London repaired the bleed that the patient had during surgery. Afterwards there were no signs of leakage revealed with the dye. Dr. London appropriately performed the surgery. There was no delay of diagnosis on Dr. London's behalf. He urged the Board to dismiss this case.

Dr. Haas stated that a ureter injury is a known complication of gynecological surgery. She stated that Dr. London did try to find out what was wrong and the patient did not show the classic symptoms.

MOTION: Ingrid E. Haas, M.D., moved to issue an Advisory Letter for poor documentation on postoperative follow up. A.R.S. § 32-1401(3)(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

SECONDED: Ram R. Krishna, M.D.

FORMAL INTERVIEWS (Continued) - THEODORE D. LONDON, M.D.

Edward J. Schwager, M.D., stated that the issue apart from the records is on the examination post-operatively, there is no other work-up and this seems problematic. The Board's Consultant faults the physician for not doing more. Dr. Schwager stated it would be the standard of care to do further work-up with a patient that had a large loss of blood. He stated that the standard of care has been breached. Dr. Haas explained that she recommended an Advisory Letter because reviewing the entire case; the diagnosis of hematoma was made. She would have expected more work-up, but by all indications the patient was stable. Dr. Krishna agreed with Dr. Haas.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., and Chris Wertheim. The following Board Members voted against the motion: Douglas D. Lee, M.D. and Edward J. Schwager, M.D. The following Board Member was absent when this matter was considered: William R. Martin, III, M.D.

VOTE: 9-yay, 2-nay, 0-abstain/recuse, 1-absent

MOTION PASSED.

NON-TIME SPECIFIC ITEMS (Continued)

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
53.	MD-03-0170A	AMB	ASHRAF A.S. GERGES, M.D.	25594	Rescind Referral to Formal Hearing and accept the Proposed Consent Agreement for an Advisory Letter for inappropriately maintaining patient records. A.R.S. § 32-1401(3)(a) - While there is insufficient evidence to support disciplinary action, the Board believes that continuation of the activities that led to the investigation may result in further Board action against the licensee.

Robert P. Goldfarb, M.D., stated that this case involved two sets of medical records, one of which was fraudulent. Dean Brekke, Assistant Attorney General, reviewed this case with the Board. Dr. Goldfarb stated that the changes the Board reviewed looked as if someone was trying to cover their tracks. Drs. Schwager and Hunter expressed concern that this case would not be going before an Administrative Law Judge (ALJ). Mr. Brekke stated that as a Litigator, he needs to be able to show proof to an ALJ and this case would have been hearsay on hearsay. Mr. Brekke stated that the Litigators have struggled through this and if they cannot show the judge sufficient proof, they aren't taking it to a judge. Sharon B. Megdal, Ph.D., reiterated that there is insufficient evidence.

MOTION: Sharon B. Megdal, Ph.D., moved to Rescind Referral to Formal Hearing and accept the Proposed Consent Agreement for an Advisory Letter for inappropriately maintaining patient records. A.R.S. § 32-1401(3)(a) - While there is insufficient evidence to support disciplinary action, the Board believes that continuation of the activities that led to the investigation may result in further Board action against the licensee.

SECONDED: Robert P. Goldfarb, M.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., and Chris Wertheim. The following Board Member voted against the motion: Ram R. Krishna, M.D. The following Board Member was absent when this matter was considered: William R. Martin, III, M.D.

VOTE: 10-yay, 1-nay, 0-abstain/recuse, 1-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
48.	MD-03-0943A	AMB	AMALIA PINERES, M.D.	20943	Accept the Draft Findings of Fact, Conclusions of Law, and Order as written for a Letter of Reprimand for improperly prescribing a fentanyl transdermal patch to a nine year old child that caused respiratory depression and caused the child's death; Probation for one-year.

Edward J. Schwager, M.D., recused himself from this case.

MOTION: Ram R. Krishna, M.D., moved to accept the Draft Findings of Fact, Conclusions of Law, and Order as written.

SECONDED: Robert P. Goldfarb, M.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., and Chris Wertheim. The following Board Member abstained

NON-TIME SPECIFIC ITEMS (Continued) - AMALIA PINERES, M.D.

from the motion: Tim B. Hunter, M.D. The following Board Member was recused from the motion: Edward J. Schwager, M.D. The following Board Member was absent when this matter was considered: William R. Martin, III, M.D.

VOTE: 9-yay, 0-nay, 2-abstain/recuse, 1-absent
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
46.	MD-00-0716	AMB	PETER R. NASH, M.D.	11954	Modification of Board Order Granted to provide that Annual Reports are to be submitted on or before the 15 th of June each year.

Peter R. Nash, M.D., made a statement at the call to the public. Dr. Nash stated that pain medicine was his main problem. He has been on the Monitored Aftercare Program (MAP) program for three and half years.

MOTION: Sharon B. Megdal, Ph.D., moved to Grant the Modification of the Board Order requiring annual reports from the Board approved psychiatrist. Reports are to be submitted on or before the 15th of June.

SECONDED: Tim B. Hunter, M.D.

Christine Cassetta, Board Counsel, stated that the treating psychiatrist stated that he does not need to see Dr. Nash more than annually to reevaluate Dr. Nash. The psychiatrist feels that Dr. Nash's prognosis is good. Kathleen Muller, Monitored Aftercare Program Coordinator, stated that the request was for annual report, but Drs. Sucher and Greenberg felt Dr. Nash did not need monitoring at all. However, they would be satisfied with annual reports.

VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
45.	MD-00-0135	AMB	RICHIE P. BAST, M.D.	14854	Modification of Board Order Granted to work a maximum of 50 hours per week.

Kathleen Muller, Monitored Aftercare Program Coordinator, reviewed the details of this case with the Board.

MOTION: Patrick N. Connell, M.D., moved to grant the modification of the Board Order to allow Dr. Bast to work a maximum of 50 hours per week.

SECONDED: Becky Jordan

Dr. Connell stated that in the past Dr. Bast got into trouble because he was not going to group therapy since he was working too much. Chris Wertheim stated that Dr. Bast requested to work more hours because his insurance went up. The Board Members discussed the Diversion Committee's Recommendation and determination of the number of hours appropriate for Dr. Bast to work. The Board expressed concern that removing the limitation in its totality may lead to problems for Dr. Bast.

VOTE: 9-yay, 2-nay, 0-abstain/recuse, 1-absent
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
47.	MD-04-0382A	AMB	PAUL A. AUPPERLE, M.D.	30485	Accept the Proposed Interim Consent Agreement for the MAP Participation.

Paul A. Aupperle, M.D., made a statement at the call to the public. Dr. Aupperle stated that he was diagnosed with ADHD. He has been working on his recovery program. He has complied with the Board's monitoring and has requested that his license be reinstated.

MOTION: Patrick N. Connell, M.D., moved to accept the Proposed Interim Consent Agreement for MAP participation.

SECONDED: Tim B. Hunter, M.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D.,

NON-TIME SPECIFIC ITEMS (Continued) - PAUL A. AUPPERLE, M.D.

Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., and Chris Wertheim. The following Board Member was absent when this matter was considered: William R. Martin, III, M.D.

VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
6.	MD-03-1148A	AMB	EVELYN COHEN, M.D.	17989	Advisory Letter for reading the incorrect set of images for a patient A.R.S. § 32-1401(3)(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

This case was pulled from the block vote for individual consideration. Becky Jordan stated that the radiologist read images that were provided to her without noticing that they were from 1993, and she was thinking they were more current and recommended dismissal of this case. Tim B. Hunter, M.D., stated that part of a radiologist's job is to review the date and ensure they are reading the correct images. Dr. Hunter stated that he would support an advisory letter.

MOTION: Becky Jordan moved to dismiss this case.

SECONDED: Ram R. Krishna, M.D.

Dr. Hunter disagreed with Ms. Jordan and Dr. Krishna. The fact is that it is part of a radiologist's job to ensure no errors are made. Ms. Jordan stated that there are errors unknown and difficult to tell from this case. Dr. Krishna stated there is no quality of care issue involved in this case. Patrick N. Connell, M.D., stated this is an issue; dates and names must be checked and if it is not on the images correctly, you send it back and make it right. Sharon B. Megdal, Ph.D., agreed with Dr. Hunter because of the disciplinary guidelines. The question is consistency in the adjudication of cases.

VOTE: 2-yay, 9-nay, 0-abstain/recuse, 1-absent

MOTION FAILED.

MOTION: Tim B. Hunter, M.D. moved to issue an Advisory Letter for reading the incorrect set of images for a patient. A.R.S. § 32-1401(3)(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

SECONDED: Chris Wertheim

VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
13.	MD-03-0494A	AMB	MICHAEL W. PEARSON, M.D.	13986	Advisory Letter for failure to properly supervise a resident resulting in retained gauze following a vaginal delivery. A.R.S. § 32-1401(3)(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

MOTION: Edward J. Schwager, M.D., moved to issue an Advisory Letter for failure to properly supervise a resident resulting in retained gauze following a vaginal delivery. A.R.S. § 32-1401(3)(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

SECONDED: Robert P. Goldfarb, M.D.

Douglas D. Lee, M.D., stated he would support dismissal in this case. He stated that because of the multiple procedures, it is not clear when the sponge was left and who would be at fault. Robert P. Goldfarb, M.D., stated that he would support an Advisory Letter because it is not correct to leave a sponge in.

VOTE: 10-yay, 1-nay, 0-abstain/recuse, 1-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
15.	MD-03-0777A	S.C.	LUCIO ARTEAGA, M.D.		Advisory Letter for unprofessional and inappropriate behavior. A.R.S. § 32-1401(3)(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

Please note this item will be on the October 2004 Agenda. The Board will be considering rescinding this action. The Board will then reconsider this matter.

NON-TIME SPECIFIC ITEMS (Continued) - LUCIO ARTEAGA, M.D.

Robert P. Goldfarb, M.D., stated that there was Unprofessional Conduct with this case. Barbara Kane, Assistant Director, noted that the taped phone call between the Dr. Arteaga and the patient after this incident was transcribed and was included in the Board's materials. Edward J. Schwager, M.D., stated that the question is the ability to cite the physician with an Advisory Letter for unprofessional behavior. It seems that if this type of behavior is ongoing that it would be considered Unprofessional Conduct. Dr. Schwager expressed a struggle to identify a specific statutory violation. Sharon B. Megdal, Ph.D., questioned whether the Board was making a policy change with this case. The Board has said in the past that rudeness would not require an Advisory Letter. Dr. Pardo stated that in the past, the allegations haven't been substantiated, but there is a transcript of a taped conversation that makes this very clear. Christine Cassetta, Board Counsel, stated that the definition of sexual conduct with a patient includes conduct of a sexual nature and the Board may interpret the comments made to this

Please note this item will be on the October 2004 Agenda. The Board will be considering rescinding this action. The Board will then reconsider this matter.

MOTION: Robert P. Goldfarb, M.D. make comments to a patient. A.R.S. § 32-1401(26)(z)(ii) Making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature.

SECONDED: Patrick N. Connell, M.D.

Patrick N. Connell, M.D., questioned using A.R.S. § 32-1401(26) "Unprofessional Conduct" includes the following, whether occurring in this state or elsewhere: (q) Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public. He stated that this conduct crosses a boundary. Dr. Goldfarb stated this goes beyond inappropriate verbal conduct of a sexual nature.

VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent

MOTION PASSED.

FORMAL INTERVIEWS (Continued)

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
58.	MD-03-0172A	AMB	RAYMOND F. GRAAP, M.D.	5332	Dismissed.

Raymond F. Graap, M.D., appeared before the Board without legal representation. Edward J. Schwager, M.D., and Robert P. Goldfarb, M.D., stated that they know Dr. Graap, but that will not affect their ability to adjudicate this case. Dr. Schwager stated that he and Christine Cassetta, Board Counsel, spoke with Dr. Graap yesterday and explained that although he was present the Open Meeting Law prevented the Board from hearing the case until today. Dr. Graap also indicated at that time that he had no objection to Dr. Schwager participating in this case.

Rudolf Kirschner, M.D., Board Medical Consultant, reviewed this case with the Board. The allegation is that Dr. Graap failed to diagnose rectal cancer in spite of the patient's complaints of rectal bleeding.

Dr. Graap made a statement to the Board. Dr. Graap stated that the patient's first office visit to his office was with a Physician Assistant (PA). Dr. Graap stated that the patient informed the PA that he had a complete physical examination one-month prior at the Veterans Affairs (VA) Hospital. She performed an exam and the patient was feeling well. He requested to stop his medication, which was denied. Dr. Graap stated that they wanted to find out more about an EKG that was performed to assess the patient's cardiac situation. Three days later he received a telephone message from the patient that he was experiencing gas and discomfort. The message stated that "the patient was taking medication for blood thinning and a heart problem and he was running into extreme gas problems, please advise." The patient thought this was due to Lanoxin, so Dr. Graap stated that he informed the patient to discontinue usage for five days, but resume it and keep it up until his scheduled follow-up. The majority of the office visits the patient was feeling fine. He did complain of diarrhea in January. Two years later Dr. Graap received a malpractice suit for this case.

Ram R. Krishna, M.D., presenting Board member, began the questioning of Dr. Graap. Dr. Graap verified with Dr. Krishna that his specialty is internal medicine and endocrinology. Dr. Graap stated that the patient was concerned about cardiac problems, but he was stable. Dr. Graap stated that the first complaint was rectal gas. The second complaint was loose stools and gas. At one point the patient was treated for hemorrhoids. The patient did not have any further symptoms after the initial conversation. The patient's weight was stable and vital signs were good. The patient originally went to Dr. Graap for a cardiac follow-up. Dr. Graap stated that another physician saw the patient over a span of 8 months. Dr. Graap stated that the patient avoided being examined over and over again.

Dr. Graap made a statement to the Board. He stated that he has learned a lot. He informed the Board that this case was going to court trial, but there were several settlement conferences. He was then informed that the insurance had reached

FORMAL INTERVIEWS (Continued) - RAYMOND F. GRAAP, M.D.

an agreement. Dr. Graap stated that he was not given a choice at that time. The insurance companies did not want to risk a large jury settlement. Dr. Graap stated that he did not see the blood reports.

Dr. Krishna asked if the patient had any weight loss. Dr. Graap stated there was no significant weight loss. Dr. Krishna stated that he is not concerned about the competency of Dr. Graap.

MOTION: Ram R. Krishna, M.D. moved to dismiss this case

SECONDED: Tim B. Hunter, M.D.

Sharon B. Megdal, Ph.D., stated she would not support dismissal, but would support an Advisory Letter. Dr. Megdal stated that Dr. Graap flipped through the pages of the chart and missed the information about prior complaints regarding this condition. Dr. Krishna stated that the physician was concentrating on the chest x-ray and the cardiogram. Dr. Schwager agreed with Dr. Krishna. Dr. Schwager stated that a lot of the conversation occurred over the phone and this is difficult to do. He would support dismissal. Dr. Goldfarb agreed with both the motion and Dr. Megdal. However, because of the circumstances of the patient he would support dismissal.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., and Chris Wertheim. The following Board Members voted against the motion: Patrick N. Connell, M.D. and Sharon B. Megdal, Ph.D. The following Board Member was absent when this matter was considered: William R. Martin, III, M.D.

VOTE: 9-yay, 2-nay, 0-abstain/recuse, 1-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
59.	MD-03-1177A	AMB	ALEXANDER ZILBERMAN, M.D.	31136	Dismissed.

Alexander Zilberman, M.D., appeared before the Board with his attorney Fredrick M. Cummings.

William Kennell, M.D., Board Medical Consultant, reviewed this case with the Board. The allegations are that Dr. Zilberman performed an unnecessary cholecystectomy; failed to order a preoperative ERCP; and failed to adequately evaluate the risk for cardiac complications. Dr. Kennell's original conclusion was that Dr. Zilberman made an honest attempt to resolve the problem. A more experienced surgeon would have had more reservations about proceeding under these circumstances.

Dr. Zilberman made a statement to the Board. He stated that he was put in a difficult situation. When the patient's physician contacted Dr. Zilberman, that physician felt that the patient did have acute cholecystitis and that the gallbladder was the source. There was no question that the patient was very ill. He did not feel the patient was a good surgical candidate. He explained this to the patient and the family as well as the attendant risks. The patient had constant nausea and pain. The pathological analysis noted inflammation of the cholecystitis in the wall of the gallbladder. The pathologist did feel there was cholecystitis and recorded chronic cholecystitis.

Patrick N. Connell, M.D., presenting Board member, began the questioning of Dr. Zilberman. Dr. Zilberman was treating an elderly woman who was deteriorating. Dr. Zilberman stated that he believes that the patient did have cholecystitis. Dr. Connell asked if the patient's bowel looked compromised. He also stated that he thought that would be the reason for her symptoms. Dr. Zilberman confirmed that the patient did not have a perforation. Dr. Zilberman felt that if he waited a few days for surgery, she would have deteriorated more. There was potential for full recovery. Dr. Zilberman stated that he still stands by his decision to perform the surgery. He stated that the patient was unable to eat. He also stated that if a patient has a constant high white cell count, their body is trying to fight off something. Dr. Zilberman felt that if he hadn't done the surgery, he would be sitting here explaining to the Board why, in the face of all her symptoms, he did not.

The Board Members questioned Dr. Zilberman. Dr. Zilberman stated that the liver function tests were normal. There was a gastroenterologist involved who didn't feel the ERCP was indicated. Dr. Zilberman stated that he would not change anything in his practice of medicine today as a result of these circumstances in this case. Dr. Hunter verified with Dr. Zilberman that the patient was on antibiotics from the time she came to the hospital. Edward J. Schwager, M.D., verified with Dr. Zilberman that the pathologist did an addendum to his report. Dr. Schwager asked Dr. Kennell if he had seen that addendum. Dr. Kennell had not. Dr. Kennell stated that he is disappointed in what he has heard from Dr. Zilberman regarding the problem with the patient. Dr. Kennell stated that caution is advised in cases like this. Dr. Schwager stated that there have been multiple consultants on this case. Because of the comorbidity of the patient, the gallbladder might be

FORMAL INTERVIEWS (Continued) - RAYMOND F. GRAAP, M.D.

best taken out to avoid sepsis. Dr. Kennell suggested that maybe a recommendation for more consultation of more senior people. Dr. Hunter referred to the HIDA scan that indicated acute cholecystitis in the gallbladder. Dr. Goldfarb asked Dr. Kennell at what point he would proceed with the surgery. Dr. Kennell stated that he would want to see a septic patient. Also, because of the multiple comorbidities, it would be good to obtain consultation. Dr. Kennell reiterated that he has not come to a conclusion about this case. Douglas D. Lee, M.D., asked Dr. Zilberman how the consultation of this patient came to him. Dr. Zilberman stated that the patient's PCP contacted him. Dr. Lee stated that the PCP felt that despite the multiple comorbidities of this patient that the gallbladder should be removed. Dr. Lee stated that Dr. Zilberman had a lot of discussion with the patient's families regarding the choices and the risks. Dr. Kennell stated that he has come across situations like this, but you must proceed with extreme caution.

Mr. Cummings made a statement to the Board on behalf of Dr. Zilberman. He stated that the CT scans show no gallstones. Based on the evaluation of the patient, Dr. Zilberman had to make a decision of which there was a point of no return. This was a judgment call. He proceeded knowing this was a high-risk procedure and the patient's desire. If he didn't do the surgery and the patient died, he would still most likely be before the Board explaining why she died. He urged the Board to dismiss this case.

Dr. Connell stated that Dr. Zilberman's thought process was quite thorough. He cannot find evidence of Unprofessional Conduct.

MOTION: Patrick N. Connell, M.D., moved to dismiss this case.

SECONDED: Ram R. Krishna, M.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., and Chris Wertheim.

VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
60.	MD-03-0880A	AMB	JOHN B. SAWYER, M.D.	11568	Dismissed.

John B. Sawyer, M.D., appeared before the Board without legal representation.

Philip Scheerer, M.D., Board Medical Consultant, reviewed this case with the Board. The allegation is that Dr. Sawyer damaged an adjacent structure at the time of transurethral resection of the prostate.

Ram R. Krishna, M.D., presenting Board member, began the questioning of Dr. Sawyer. Dr. Sawyer stated that he seldom discusses complications of this type of operation because they are so few. He stated that incontinence is very rare. He does tell patients that they can expect to be incontinent for a short period after surgery. Dr. Sawyer stated that he was very surprised to hear that the external sphincter of this patient was damaged. He stated that it is not uncommon to remove a portion of the external sphincter. Dr. Sawyer stated that the indications for this patient's surgery and the most important one for this patient was that he could not empty his bladder. Dr. Sawyer informed Dr. Krishna that he is now retired. Dr. Sawyer stated that he has gone on many medical missions in Mexico.

The Board Members questioned Dr. Sawyer. Dr. Sawyer stated that he failed to make the diagnosis in this patient's situation and the other physicians also failed to make the diagnosis. He stated that the patient had a progressive neurological disease and his incontinence is a result of that disease. Dr. Sawyer's lawyer told him to just settle this case out of court because he is retiring anyway. Dr. Sawyer stated that other physicians in Tucson have said that the portion of the sphincter he removed should not have caused incontinence.

Dr. Krishna stated that there was a complication, but not a major one. The mere fact that Dr. Sawyer followed through post-operatively and did inform the patient of temporary incontinence was to be expected. Also, Dr. Sawyer is retired. He recommended that this case be dismissed.

MOTION: Ram R. Krishna, M.D. moved to dismiss this case.

SECONDED: Patrick N. Connell, M.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D.,

FORMAL INTERVIEWS (Continued) - JOHN B. SAWYER, M.D.

Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., and Chris Wertheim. The following Board Member was absent when this matter was considered: William R. Martin, III, M.D.

VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent

MOTION PASSED.

NON-TIME SPECIFIC ITEMS (Continued)

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
24.	MD-04-L030A	L.I.	STEPHEN J. WILSON, M.D.	N/A	Appeal of ED Denial of License Granted.

Stephen Wolf, Assistant Attorney General, and Michelle Semenjuk, Licensing Division Chief, reviewed this case with the Board. Mr. Wolf would asked that the Board return this matter to the licensing division for further investigation. Dr. Megdal asked if the statute requires the Board to rule on appeal of Executive Director's denial of licensure within a certain period. Christine Cassetta, Board Counsel, stated that the Board does not have time frames regarding ruling on this type of appeal.

MOTION: Ram R. Krishna, M.D. moved to go into executive session at 3:15 p.m.

SECONDED: Douglas D. Lee, M.D.

VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent

MOTION PASSED.

The Board returned to open session at 3:23 p.m.

MOTION: Patrick N. Connell, M.D., moved to Grant the Appeal of Executive Director's Denial of Licensure.

SECONDED: Robert P. Goldfarb, M.D.

VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
25.	MD-03-0166A	G.W.	ABEDON A. SAIZ, JR., M.D.	24387	Uphold the Appeal of the Executive Director's Referral to Formal Hearing and accept the Proposed Consent Agreement.

Attorney Joseph D'Aguanno made a statement at the call to the public on behalf of Dr. Saiz. He asked the Board to reconsider this referral. He urged the Board to accept the consent agreement.

Stephen Wolf, Assistant Attorney General, stated that the consent agreement is very straightforward. The discipline is wrapping this case with the previous discipline that the Board has imposed. This is not a surgery that occurred after the Board imposed discipline in the earlier cases. Dr. Megdal verified with Mr. Wolf that this would be considered as another disciplinary action. Dr. Hunter asked if this consent agreement prevents the Board from taking action should another case come before the Board in the future. Mr. Wolf stated that it would not.

MOTION: Ram R. Krishna, M.D. moved to uphold the Appeal of the Executive Director's Referral to Formal Hearing and Accept the Proposed Consent Agreement.

SECONDED: Becky Jordan

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., and Edward J. Schwager, M.D. The following Board Member voted against the motion: Chris Wertheim. The following Board Member abstained the motion: Robert P. Goldfarb, M.D. The following Board Member was absent when this matter was considered: William R. Martin, III, M.D.

VOTE: 9-yay, 1-nay, 1-abstain/recuse, 1-absent

MOTION PASSED.

FORMAL INTERVIEWS (Continued)

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
61.	MD-03-0995A	AMB	JOSEPH MICHAEL SUAREZ, M.D.	10269	Advisory Letter for failing to adequately evaluate and document his neurological examination and obtain an emergency neurological consultation in an obtunded patient within a reasonable time period resulting in delay of treatment. A.R.S. § 32-1401(3)(a) - While there is insufficient evidence to support disciplinary action, the Board believes that continuation of the activities that led to the investigation may result in further Board action against the licensee.

Joseph M. Suarez, M.D. appeared before the Board with his attorney Cal Raup.

Rudolf Kirschner, M.D., Board Medical Consultant, reviewed this case with the Board. The allegation is that Dr. Suarez negligently delayed the diagnosis in treatment of a stroke.

Dr. Suarez made a statement to the Board. Dr. Suarez reviewed his background with the Board.

Robert P. Goldfarb, M.D., presenting Board member, began the questioning of Dr. Suarez. Dr. Goldfarb commented that the patient was 28 years old and was found stuporous at home. When Dr. Suarez performed an evaluation, he noted there was no evidence of head trauma. Dr. Suarez stated that the patient's speech was not clear, nor could she follow Dr. Suarez's commands. Dr. Suarez did a limited neurological performance evaluation. Dr. Goldfarb brought up the fact that five hours after the patient was brought to the emergency room, there was still no diagnosis. Dr. Suarez confirmed with Dr. Goldfarb that they do have a stroke protocol in place at his hospital. He looked for signs of a stroke, but did not find any. The Fire Department noted the issue with the patient's eyes, but the nurse did not relay this information to him. Dr. Suarez stated that he met the standard of care when he did look for a stroke and he did order a CAT scan to be sure there was no bleeding. Dr. Goldfarb stated that Dr. Suarez missed the window for treatment of a stroke more than once. Dr. Goldfarb expressed criticism of how the patient was handled and that there was no diagnosis after five hours.

The Board Members questioned Dr. Suarez. Dr. Suarez stated that the responsibility for emergency room patients when he leaves goes to the admitting team. Dr. Suarez informed the Board that they now have digital imagery, but not when this patient was admitted.

Dr. Suarez made a statement to the Board. He stated that he does not disregard reports in the emergency room. He did not see the report until later review. Had he known about the eye deviation he would have followed the stroke guideline. He realized the chart was not adequate. At the end of the shift, he relayed his concerns about this patient to the physician coming on duty. It is now his practice to pay close attention to symptoms for a stroke, involve neurology, and order CT angiograms early on.

Mr. Raup stated that there is a problem in the system in that emergency department. He asked the Board to consider this information.

Dr. Goldfarb stated this is a difficult case, but he does see faults with Dr. Suarez's care of the patient. He stated that Dr. Suarez's method of neurological examination did not serve him well. Also, the checklist and the dictated list did not give him the information that he would possibly need. If you have a patient who is not doing well, you perform repeated examinations paying close attention to possible change. Dr. Suarez did not find the lateral deviation in the patient's eye. You should record progression from time to time. Also, there were no neurological consultations sought. Dr. Goldfarb recommended that the Board support a finding of Unprofessional Conduct for failing to adequately evaluate and obtain emergency neurological consultation in an obtunded patient within a reasonable time period resulting in delay of treatment in violation of A.R.S. § 32-1401(26) "Unprofessional Conduct" includes the following, whether occurring in this state or elsewhere: (q) Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.

MOTION: Robert P. Goldfarb, M.D., moved for a finding of Unprofessional Conduct for failing to adequately evaluate and obtain emergency neurological consultation in an obtunded patient within a reasonable time period resulting in delay of treatment in violation of A.R.S. § 32-1401(26) "Unprofessional Conduct" includes the following, whether occurring in this state or elsewhere: (q) Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.

SECONDED: Ram R. Krishna, M.D.

Edward J. Schwager, M.D., stated that he is not sure this would warrant disciplinary action. It is not clear to him that at what point the physician needed to hold the responsibility for not getting the materials in a timely basis. However, it is hard

FORMAL INTERVIEWS (Continued) - JOSEPH MICHAEL SUAREZ, M.D.

to look at the record regarding this patient and determine if what was said actually occurred. Patrick N. Connell, M.D., agreed with Dr. Schwager. He stated that working in a busy emergency department with a resource poor environment with an understaffed department, things could get out of control. There were significant issues. The documentation could have been better. Clearly Dr. Suarez needed to document successive exams. Dr. Hunter stated that he couldn't decipher where there was a systems failure or something else. Sharon B. Megdal, Ph.D., would support Unprofessional Conduct. She stated that the emergency room physicians have responsibility for their patients. Dr. Goldfarb stated that he does think there were system errors here, but one cannot ignore the lack of obtaining a diagnosis within a reasonable period of time in an emergency room setting where there is a stroke protocol.

VOTE: 7-yay, 4-nay, 0-abstain/recuse, 1-absent
MOTION PASSED.

MOTION: Robert P. Goldfarb, M.D., moved to issue an advisory letter for failure to adequately evaluate and document obtain a neurological evaluation in an obtunded patient in a reasonable amount of time and documentation. A.R.S. § 32-1401(3)(a) - While there is insufficient evidence to support disciplinary action, the Board believes that continuation of the activities that led to the investigation may result in further Board action against the licensee.

SECONDED: Ingrid E. Haas, M.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D. and Chris Wertheim. The following Board Member was absent when this matter was considered: William R. Martin, III, M.D.

VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent
MOTION PASSED.

NON-TIME SPECIFIC ITEMS (Continued)

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
26.	MD-04-L093A	L.I.	MICHAEL H. GOTLIB, M.D.	N/A	Grant License; Process in a routine fashion.

MOTION: Patrick N. Connell, M.D., moved to Grand the License and Process in a routine fashion.

SECONDED: Ram R. Krishna, M.D.

Michelle Semenjuk, Licensing Division Chief, stated that Dr. Gotlib has been practicing psychiatry since 2000.

VOTE: 10-yay, 0-nay, 0-abstain/recuse, 2-absent
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
27.	MD-04-L075A	L.I.	JENNIFER K. O'NEILL, M.D.	N/A	Process Dr. O'Neill's license application routinely in accord with the recommendations of the Board's consultant.

MOTION: Edward J. Schwager, M.D., moved to go into executive session at 4:34 regarding case numbers 26 and 27.

SECONDED: Patrick N. Connell, M.D.

VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent
MOTION PASSED.

The Board Members returned to open session at 5:26 p.m.

MOTION: Patrick N. Connell, M.D., moved that Board Staff process Dr. O'Neill's license application routinely in accord with the recommendations of the Board's consultant.

SECONDED: Becky Jordan

Ram R. Krishna, M.D., stated when Dr. O'Neill applied for licensure she put no when she should have said yes on her license application. Edward J. Schwager, M.D., stated that one of the reasons this came to the Board is for consistency. Potentially making false statements to the Board. Sharon B. Megdal, Ph.D., expressed concern that Dr. O'Neill would

NON-TIME SPECIFIC ITEMS (Continued) - JENNIFER K. O'NEILL, M.D.

have problems and would support a probationary license with practice restrictions. Robert P. Goldfarb, M.D., agreed with Dr. Megdal.

VOTE: 6-yay, 5-nay, 0-abstain/recuse, 1-absent
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
41.	MD-04-0277A	AMB	MARK R. WADE, M.D.	23131	Accept the Proposed Consent Agreement with the elimination of the tolling provision; Decree of Censure for: (a) committing a felony, (b) violating federal and state laws applicable to the practice of medicine, (c) having a disciplinary action taken against him by another licensing jurisdiction, and (d) prescribing controlled substances without establishing a doctor-patient relationship or performing a physical examination of the patient; Probation for five-years to run concurrently with the probationary order issued by the Tennessee Board.

This case was pulled from the block vote for individual consideration. Robert P. Goldfarb, M.D., clarified the State of California's action against this physician as a result of a Probationary Order issued by the Tennessee Board. Christine Cassetta, Board Legal Advisor, stated that the tolling provision should be removed from the Order.

MOTION: Ram R. Krishna, M.D., moved to accept the consent agreement with the elimination of the tolling provision.

SECONDED: Patrick N. Connell, M.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., and Chris Wertheim. The following Board member was absent when this matter was considered: William R. Martin III, M.D.

VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent

MOTION PASSED.

Proposed 2005 Board Meeting Dates

MOTION: Patrick N. Connell, M.D., moved to accept the Proposed 2005 Board Meeting Dates with October 2005 Board Meeting changed to October 6-7, 2005.

SECONDED: Ram R. Krishna, M.D.

VOTE: 11- yay, 0-nay, 0-abstain/recuse, 1-absent

MOTION PASSED.

Executive Director's Report

FY 2003 – 2004 Annual Report

Sharon B. Megdal, Ph.D., stated that she submitted a cosmetic change to Dr. Cassidy.

MOTION: Sharon B. Megdal, Ph.D., moved to approve the FY 2003-2004 Annual Report

SECONDED: Patrick N. Connell, M.D.

Patrick N. Connell, M.D., verified that the report is sent to the governor's office.

VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent

MOTION PASSED.

FY 2004 – 2007 Strategic Plan

Patrick N. Connell, M.D., expressed concern about the "unknown" numbers to be submitted to the governor's office. Barry A. Cassidy, Ph.D., P.A.-C, Executive Director, stated that Sandra Waitt, the Board's previous Management Analyst, contacted the governor's office to ask them how to submit numbers if the Board had changed its process and don't know what to anticipate. He stated that he was told this was their suggestion, to leave the numbers "unknown." Edward J. Schwager, M.D., mentioned that Ms. Waitt informed him that the Governor's office told her only that a Board has never done it that way and it might be returned.

Patrick N. Connell, M.D., recommended that Board staff complete the report prior to submitting to the governor's office.

NON-TIME SPECIFIC ITEMS (Continued) – EXECUTIVE DIRECTOR'S REPORT

Randi Orchard, Chief Financial Officer, explained the numbers in the report to the Board. Dr. Schwager agreed with Dr. Connell that Board staff should make an estimate. Sharon B. Megdal, Ph.D., suggested including an explanation of last year's numbers versus this year's estimation and a note that says the process has changed. Ms. Orchard informed the Board that the report is not due until September 1, 2004. Dr. Schwager recommended that this report be completed and returned to the Board for approval at the budget teleconferenced to be announced.

Qualifications for Applicant Medical Consultants

Edward J. Schwager, M.D., asked if a physician has an advisory letter on their record should they be disqualified from being a Board Staff Medical Consultant. Dr. Schwager stated that physicians should be able to serve as Board Staff Medical Consultants because an Advisory Letter is a non-disciplinary action, but is unsure of the importance. Sharon B. Megdal, Ph.D., stated that from a public point of view, it would be better that a physician has had no action taken against them. But, she also questioned if it hindered the ability to find any physician if that was the case. Stephen Wolf, Assistant Attorney General, stated that if it is an in-house Medical Consultant, it might be brought up to discredit the Board. Robert P. Goldfarb, M.D., agreed with Mr. Wolf, but it would depend on what the Advisory Letter would be for. Dr. Hunter stated that malpractice suits are similar, especially with certain specialties where it is common. Dr. Schwager stated that the consensus he is hearing from the Board Members is that an Advisory Letter should not prohibit a physician from serving as a Board Staff Medical Consultant but stated that hiring and firing would be at the Executive Director's discretion.

Monitored Aftercare Program Rules

Chart Outlining Course of Action on a Relapse Under an SRA or MAP Probation

Patrick N. Connell, M.D., noted he thinks the chart is incorrect and asked that it be reviewed.

MAP Rules - With Edits After Initial Approval By the Board

MOTION: Patrick N. Connell, M.D. moved to adopt MAP Rules with the edits.

SECONDED: Douglas D. Lee, M.D.

VOTE: 10-yay, 0-nay, 0-abstain/recuse, 2-absent

MOTION PASSED.

Amendment to Disciplinary Rules to Add Civil Penalty Section

Disciplinary Rules with Penalty Section Added

Christine Cassetta, Board Counsel, reviewed the items that were changed.

MOTION: Patrick N. Connell, M.D., moved to accept the Amendment to Disciplinary Rules to Add Civil Penalty Section

SECONDED: Robert P. Goldfarb, M.D.

VOTE: 10-yay, 0-nay, 0-abstain/recuse, 2-absent

MOTION PASSED.

Process for Succession of Officers

Board Officer Roles

Nomination of Board Officers

Election of Officers

MOTION: Patrick N. Connell, M.D., moved to table the Process for Succession of Officers, Board Officer Roles, Nomination of Board Officers, and Election of Officers until the October 2004 Board Meeting.

SECONDED: Chris Wertheim

VOTE: 10-yay, 0-nay, 0-abstain/recuse, 2-absent

MOTION PASSED.

Chair's Report

Consideration of Possible Date Change for the October 13-14, 2004 Board Meeting

The Board discussed a possible date change due to schedules. Barry A. Cassidy, Ph.D., P.A.-C, Executive Director, commented that if his evaluation is to be discussed at the October 2004 Board Meeting, it would not be fair to him that Board Members would be missing from the meeting. The Board Members discussed changing the September 8, 2004 Teleconference Meeting into a on-site half day meeting to discuss the Executive Director's evaluation and teleconference matters.

NON-TIME SPECIFIC ITEMS (Continued) – CHAIR'S REPORT

MOTION: Patrick N. Connell, M.D., moved to hold a special on-site meeting on September 8, 2004 at 1:00 p.m in place of the Teleconference Meeting and also discuss the Executive Director's performance evaluation with discussion relative to continuation of employment and salary.

SECONDED: Ingrid E. Haas, M.D.

VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent

MOTION PASSED.

Meeting Review

Assessment of New Meeting Format of the August 11-12, 2004, Meeting

Sharon B. Megdal, Ph.D., stated that the timing worked well. Edward J. Schwager, M.D., stated that the October 2004 agenda would have the same format unless any Board Members oppose.

Approval of Minutes

May 12, 2004, Teleconference Minutes

June 4, 2004, Summary Action Minutes *including Executive Session*

July 7, 2004, Teleconference Minutes

MOTION: Ram R. Krishna, M.D., moved to accept the May 12, 2004, Teleconference Minutes, June 4, 2004, Summary Action Minutes including Executive Session, and the July 7, 2004, Teleconference Minutes.

SECONDED: Becky Jordan

VOTE: 10-yay, 0-nay, 0-abstain/recuse, 2-absent

MOTION PASSED.

May 14, 2004, Off-Site Minutes

MOTION: Ram R. Krishna, M.D., moved to accept the May 14, 2004, Off-Site Minutes with the changes submitted by Christine Cassetta, Board Counsel.

SECONDED: Sharon B. Megdal, Ph.D.

VOTE: 10-yay, 0-nay, 0-abstain/recuse, 2-absent

MOTION PASSED.

Meeting Adjourned at 6:37 p.m.

[Seal]

Barry A. Cassidy, Ph.D., P.A.-C, Executive Director